


Office of the County Clerk  
Council Services Division  
4396 Rice Street, Suite 209  
Lihu'e, Kaua'i, Hawai'i 96766

INTRA-OFFICE  
M E M O R A N D U M

October 22, 2012

TO: All Councilmembers

FROM: Codie Yamauchi, Council Services Assistant I 

RE: MINUTES OF THE OCTOBER 3, 2012 SPECIAL COUNCIL MEETING

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This is to inform you that a copy of the Minutes of the October 3, 2012 Special Council Meeting is available electronically (located on your computer V: drive, MINUTES folder) and in the Council Services Office for your review. These Minutes will be submitted for your approval at the November 14, 2012 Council Meeting.

Please note that once these Minutes are approved, the recording will be erased.

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## SPECIAL COUNCIL MEETING

OCTOBER 3, 2012

The Special Meeting of the Council of the County of Kaua'i, was called to order by the Council Chair at the Council Chambers, 4396 Rice Street, Suite 201, Lihu'e, Kaua'i, on Wednesday, October 3, 2012 at 9:17 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum  
Honorable Dickie Chang  
Honorable Nadine K. Nakamura  
Honorable Mel Rapozo  
Honorable JoAnn A. Yukimura  
Honorable Jay Furfaro

Excused: Honorable KipuKai Kualii

Chair Furfaro: Please note that we do have an excuse letter from Councilmember KipuKai who is attending a conference on behalf of the Council dealing with Native Hawaiian rights.

### APPROVAL OF AGENDA.

Mr. Bynum moved for approval of the agenda as circulated, seconded by Ms. Yukimura, and unanimously carried.

### COMMUNICATIONS:

C 2012-336 Communication (07/20/2012) from the Prosecuting Attorney, requesting Council approval to apply, receive and expend State of Hawai'i, Office of Youth Services funds for the Keiki P.O.H.A.K.U. Diversion Program in the amount of \$35,000.00, and approval to indemnify the State of Hawai'i, Office of Youth Services for the term commencing August 15, 2012.

Mr. Rapozo moved to approve C 2012-336, seconded by Mr. Chang.

Chair Furfaro: Is there any discussion? If not, I would like to suspend the rules first and take testimony.

There being no objections, the rules were suspended.

ELAINE DUNBAR: Good morning. My name is Elaine Dunbar. I signed up to testify for one specific reason, if that cannot be accomplished, I will give my testimony now. I was going to give it later. I would like to ask the Chair and Councilmembers for a formal request for Tim Bynum to recuse himself. I believe you will have a quorum even if he is gone.

Chair Furfaro: I believe we did get opinions on his participation and they were approved.

Ms. Dunbar: By whom? By the County Attorney?

Chair Furfaro: I will ask you to take a side seat and I will ask the County Attorney to give an answer to that effect.

Ms. Dunbar: All right. Thank you.

ALFRED CASTILLO, JR., County Attorney: Good morning Council Chair and Councilmembers. I am Al Castillo, County Attorney.

Chair Furfaro: Al, it was queried by us that a question has been raised that Mr. Bynum should be recusing himself from participating in this Keiki P.O.H.A.K.U. discussion. It is my understanding by other agencies that we have gotten opinions on that he is not required to recuse himself. Could you expand on that?

Mr. Castillo: Well, Council Chair, with all due respect, I know what the Board of Ethics opined regarding Councilmember Bynum's participation. He holds the key on whether or not he wants to participate in this agenda item. I can privately give him my legal advice. I do not want to do it right now, but I am not going to opine on an opinion from the Board of Ethics. I am sorry. I cannot answer any more than that.

Chair Furfaro: But I am correct that we did, in fact, get their acknowledgment that he could participate?

Mr. Castillo: He could participate under the circumstances that were presented to the Board of Ethics.

Chair Furfaro: Thank you.

Mr. Castillo: You are welcome.

Chair Furfaro: You may have the floor, Mr. Bynum.

Mr. Bynum: Did I just hear you say you could advise me about this, but not now?

Mr. Castillo: I could, but not now on the open floor. I mean there are privileged communications between your attorney, me, and you. So I would not want to do it on the open floor.

Mr. Bynum: Okay.

Chair Furfaro: Mr. Bynum has indicated to me he would like to take a recess to have that time with you. So note, Mr. Clerk, we are in recess.

There being no objections, the meeting recessed at 9:23 a.m.

The meeting reconvened at 9:42 a.m., and proceeded as follows:

Chair Furfaro: We are back from that recess. I am going to give Mr. Bynum the floor.

Mr. Bynum: Mr. Chair, I would like to ask a question of the Prosecutor?

Chair Furfaro: Okay. The rules are suspended.

There being no objections, the rules were suspended.

SHAYLENE ISERI-CARVALHO, Prosecuting Attorney: Shaylene Iseri-Carvalho, Prosecuting Attorney.

Chair Furfaro: Thank you, Shay. Mr. Bynum, after consultation with the County Attorney, has a question for you.

Mr. Bynum: Ms. Carvalho, do you object to me continuing to proceed with the Keiki P.O.H.A.K.U. program?

Ms. Iseri-Carvalho: I believe given the circumstances, you have the inability to be fair and impartial.

Mr. Bynum: Do you object to me being a Councilmember to participate in this item?

Ms. Iseri-Carvalho: I believe you should be a Councilmember not only for this agenda item but for every agenda item. That is what you are elected to be.

Mr. Bynum: I was just trying to get a clear answer. Do you object to me continuing? Do you think I have a conflict of interest?

Ms. Iseri-Carvalho: I believe that you should believe that you have a conflict of interest.

Mr. Bynum: I am asking you what your opinion is?

Ms. Iseri-Carvalho: I believe you have a conflict of interest.

Mr. Bynum: Thank you very much.

Chair Furfaro: Shay, thank you for coming up.

Ms. Iseri-Carvalho: Thank you.

Chair Furfaro: Mr. Bynum, you still have the floor.

Mr. Bynum: I am having deja vu, because I have been here before. I think the public record will indicate that the Prosecutor's Office has a long history of trying to keep me from doing my due diligence as a Councilmember and circumvent oversight of her office with legitimate questions that have risen from the community. I have attempted to do that with integrity and with caution. Last time the Prosecutor came here and made disparaging remarks about my character and demanded that I be recused. Out of an overabundance of caution, I did. I then went to the Board of Ethics and asked them for their *mana'o* about whether I should continue, they unanimously said I did not have a conflict of interest. I recognize that the circumstances have changed somewhat, and based on the Prosecutor's stating again today that I should recuse myself, again, with an overabundance of caution, I am not going to participate in this particular agenda item today. But I do that over the objections of what I think is appropriate and proper. But I want to

continue with this cautious approach to these allegations that keep getting thrown at me and others. I think that the public record is clear. I opined recently that I believe that the Prosecutor's Office has found themselves in conflict with a number of institutions and individuals, because of misconduct, and I think...

Mr. Rapozo: Mr. Chair, I am going to raise a point of order, because I believe that has nothing to do with this. I think the point was made.

Chair Furfaro: Can you cite a rule, please?

Mr. Rapozo: Yes. It is 13c.

Chair Furfaro: Okay. We are going to go into recess while I review 13c.

There being no objections, the meeting recessed at 9:45 a.m.

The meeting reconvened at 9:48 a.m., and proceeded as follows:

Chair Furfaro: By our rules, a rule has been challenged and the decision of the challenge is the Chair's interpretation of the rules. The rule was 13c. Mr. Bynum, I should ask you to confine your comments to your conflict and that is what was on the table. So please note that and you have the floor.

Mr. Bynum: I was one sentence from being done. What I said is that I believe that a series of conflicts that the Prosecutor's Office has found themselves in with a number of institutions and individuals has occurred. Today is just another example of another institution finding themselves in conflict, because of various reasons, which I trust my colleagues will address today during this session. But I do believe that I have a First Amendment right to participate as a Councilmember and that those rights are being abridged. Thank you.

Mr. Bynum was noted as recused from discussion C 2012-336 at 9:49 a.m.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: Thank you, Mr. Bynum. You are excused. Again, I would like to call the meeting back to order. The Chair would ask the privilege on the floor before we go into any further discussion. Thank you very much. First and foremost, to my colleagues on the table, The Garden Island is present today, and I want to make sure everybody notes that there was a piece of communication from David Hipp that was directed to me as I have had some queries with him. I do not know how The Garden Island got my communication back from Mr. Hipp. It did not come from me. So that is discouraging for me. But since that note is out, I will now circulate this piece of correspondence.

At the same time, I want to let you folks know that after I received that, and through some back and forth communications with O.I.P. as well, I want you to know on Monday I had submitted a new agenda item, which the agenda is controlled by the Chairman according to our rules. I will be posting on the 17th of October a discussion dealing with Teen Court. And on the advice of O.I.P., Teen Court queries today should not be part of today's discussion. That is the verbal interpretation that I got from them. I would like the Members to honor and trust

the fact that as I share this piece of correspondence with you that you understand the queries that I have made with O.I.P. through our staff. I will be posting a new agenda item to that. I am not going to recognize you at the moment, Vice Chair Yukimura, until I have had an opportunity to give my overview. On another note, I want to say I think a part of the correspondence to me from Mr. Hipp also did not reflect in the media the fact that this office that he represents, the Office of Youth Services, supports both programs. That was the piece that perhaps was missing. I think I see also people in the audience today from the Department of Education that supports both diversion programs. I see people here in the audience that have represented Hale 'Ōpio who supports both diversion programs and I see members of our Police force who are here to show support of both programs. On that note, before we do go any further, it was important to earmark that.

I would also like to point out—and it is a full day of doing research as a Chair here as we have items that come up. The Teen Court, which will come up on October 17, is important for us to have discussion as a separate agenda item because during the difficult funding periods that the State of Hawai'i went through, there were some programs cut in the Judicial system, funding. And one of those I am trying to research is Teen Court. Through the procurement process, a piece of correspondence that I received Monday on questions going to Ernie Barreira, the Director of Purchasing—was if they saw any conflicts in the agreements and contracts and so forth dealing with Keiki P.O.H.A.K.U. Although his position is not one to interpret all of the standards, there were no conflicts reported from them on Keiki P.O.H.A.K.U. So that piece is here and I want to thank Mr. Barreira for bringing it over.

Then I would also like to note this is why I think we need to have a clear posting on Teen Court, so we understand the history of what was the downsizing of funding for Teen Court. Many of the people that have communicated to me, including the Mayor's Crime Task Force, actually support both programs. That is what I got out of it. On that note, I wanted to give, in fairness to all members, an update on the queries that I have made and I will be posting Teen Court as a separate item based on the opinion I got, although it was the opinion of the day and that references the Office of Information Practices (O.I.P.). If you call in and ask an opinion, you talk to the lawyer who is assigned for the day and they give you a quick evaluation. I do not have that in writing, but I will take that advice. The bottom line history for our community, the testimony that I have from people indicate that they are in support of both programs. That is where we are going to go today on this agenda item. Our meeting is called to order, so that I can let you speak, Vice Chair Yukimura, you have the floor.

Ms. Yukimura: Thank you, Mr. Chair. I have grave reservations about the opinion from O.I.P. I do not believe they understand the relationship or the need for coordination between Teen Court and any other diversion program in terms of assessment and determining which diversion program is important for which child and how the decisions are made. I think these two projects are intricately interconnected and I cannot believe that the Sunshine Law would be allowed to limit debate on this issue, and so I want to request that we have a written opinion from O.I.P. and that we defer this matter until we get an opinion, because it could greatly affect the decision here.

Chair Furfaro: Your point is well-taken and to recap it, I just want to make sure I understand that you are then suggesting that as I scheduled Teen Court for October 17, then you would also ask us to defer this item until October 17?

Ms. Yukimura: That is correct.

Chair Furfaro: I just wanted to get your comments. Mr. Rapozo, you now have the floor.

Mr. Rapozo: I think I said this last week that we would defer this only to have another excuse to defer. Whether Councilmember Yukimura agrees with O.I.P. or not, O.I.P. is the governing authority. The substance of the opinion, I know this because I requested the opinion from O.I.P. yesterday, because I started to see the emails and it started to become a Teen Court issue versus the Keiki P.O.H.A.K.U program. This was the general rule that was explained to me by O.I.P.—If posting of the agenda does not give the public any indication that a specific item will be discussed, it cannot be discussed. That is just the rule. O.I.P., and I am sorry that Councilmember Yukimura disagrees with that, but that is the law. That is the Sunshine Law. Do I agree with the Sunshine Law? No, but it is the law. Do I agree with the 40 miles per hour speed limit in front of the golf course? No, but it is the law. My point is this program, as I am reading this agenda item, is to be implemented on August 15, which is not long from now. Every day, as I have stated, that we have pushed this off for whatever reason, and there will be another one next week, it just keeps the kids out of the program one extra week. I think it is clear if you read all of the documentations that we have been provided, I think it is clear that the intention is to support both programs. I informed the Chair yesterday that I would be more than willing to have the Teen Court discussion in the Public Safety Committee, because that is where it belongs. It is a Public Safety issue and I am hoping that is where it will be. But as for today, the questions have been answered and if you do not agree with it, vote no, but stop prolonging the madness already and stop utilizing this forum as a place to be upset with somebody that you are upset with. This is not the venue. This is a program that has received approvals by the Mayor's Task Force, by the State's Committee, including the Teen Court Coordinator. I do need to clarify one thing. I know Mr. Bynum in his statement says, "This is yet another conflict with an existing agency." This has nothing do with Teen Court, this is an Office of Youth Services (O.Y.S.) grant for Kaua'i to help kids. It has nothing to do with Teen Court. I look forward to the discussion on the 17th, Mr. Chair. I appreciate you posting that on the Committee. But today, I am not supporting any more deferrals. The kids deserve to be treated properly and this program fills that need; it fills a gap and for this Council to say we need another deferral, it is really offensive, insulting, and damaging to our kids. I look forward to the discussion and I am actually ready to vote.

Chair Furfaro: On two points of clarification, I want to make note, although Mr. Rapozo indicated that yesterday he made those queries, my posting for October 17 came up on Monday. Although we may have been on similar tracks, we were probably hours apart. But I do want to say my real concern here is the fact that correspondence that is directed to me and only copied to people within my Office gets into The Garden Island. That is not acceptable. I am three-quarters the way done on making queries as to what is the fair and right thing to do. This morning I am reading about my correspondence in The Garden Island. It is public now. It is posted "received," and I am hearing there is somewhat of an agreement—Jade, you have my request on October 1 to have Teen Court back? I posted it Monday the 1st. Make note of the fact on my request, yet to be discussed, I had put it in my Committee versus Mr. Rapozo's Committee. Vice Chair Yukimura, I recognize you.



Ms. Yukimura: Yes. Mr. Chair, I am not questioning O.I.P.'s opinion. I am questioning whether all of the relevant facts of the circumstances were conveyed to them? The specific item to be discussed is the Keiki P.O.H.A.K.U. Project, but I believe there is an O.I.P. opinion that says that if anything is somehow related it can be discussed because the Sunshine Law was not meant to limit debate. I have already pointed out one connection of Teen Court to Keiki P.O.H.A.K.U. and they are both diversion programs. How do you make the assessment as to which diversion program the child should go into? That is a very important question. And the other connection is that the moneys that are being applied for Keiki P.O.H.A.K.U. can be used for Teen Court. So there may be some other moneys available. That is why there is supposed to be some coordination at the local government level. There is supposed to be a plan for diversion and graduated sanctions and I have not seen that yet. There is a really important emphasis in the Federal Law that there needs to be a coordinated approach and that has not yet been shown. Keiki P.O.H.A.K.U. and Teen Court are related. I believe that the Sunshine Law allows and even mandates that questions be asked and allowed for it. I am willing to get the official opinion before that. I do not think we should just go on a verbal opinion where we are not clear that the O.I.P. understood the connection between Teen Court and Keiki P.O.H.A.K.U. Indeed, it has taken me hours of research to determine that by looking at the Federal Law itself, talking to people, and that, I do not believe, is really understood by this Council yet and needs to be understood. So if we are going to have no questions asked about Teen Court, then we need to—and it is going to be a matter discussed on the 17th, we need to defer this decision-making until then. I want to say that my request for deferral is to give the benefit of the doubt and because I see some of the potential good of Keiki P.O.H.A.K.U. that I do not want to vote against it, but I do need to know it is well-thought out and it is well-coordinated and will be well-implemented and those are the questions that I feel I have the right and responsibility to be able to ask.

Chair Furfaro: Just for a moment of clarification on communicating, I feel for myself I am a pretty good communicator when it comes to asking questions to get reasonable answers. Sometimes even our staff indicates that they want to be very clear with my questions to the State. My questions dealt with the fact that can we discuss Keiki P.O.H.A.K.U. along with issues tied to Teen Court? To me that was pretty clear. I want to make sure that you understand how I communicated that through our staff and for the right reasons. We do not have the written communication and we do have verbal cautions as I mentioned from the "Attorney Of The Day," but because of similar concerns about doing the right thing for the right people the first time, I am willing to put the Teen Court on the agenda, to question and discuss it on the 17th. I just want to make sure we were clear with my understanding. Mr. Rapozo, you have the floor.

Mr. Rapozo: I just want to say that Councilmember Yukimura said she spent hours researching this matter and so have I. Councilmember Yukimura says she does not believe this Council understands—again, that is not the first time she has said that, and I take offense. I mean I think I understand this matter probably better than Councilmember Yukimura, that is my opinion. Supreme Court Justices disagree, they are the top, most brilliant lawyers in the Country that sit on the Supreme Court and they disagree, but they vote. That is all I am asking, Mr. Chair. Let us have the discussion, have the public testimony, and we will take the vote. If she wants to make a motion to defer, if she gets the vote, she gets the vote. I believe I remember last week, Mr. Chair, and correct me if I am

wrong, that we were heading to a vote this week. That is when the motion was made, I believe the Chair mentioned that it would be deferred, but we will take action today, and I am hoping that we take action today. One way or the other, let us take action today because it is just tiring, and the people are here, and we want to get them back to work, especially the highly-paid Police Officers in the back. Thank you.

Chair Furfaro: Mr. Chang, you have the floor.

Mr. Chang: Thank you, Chairman, I was going to recommend the same thing, if we can suspend the rules because we have people who are here to testify and I know that several of them are on our Juvenile Crime Coalition, so I would like to hear from them.

Chair Furfaro: I understand.

Mr. Chang: Thank you.

Chair Furfaro: Vice Chair Yukimura, last question before I suspend the rules and take public testimony.

Ms. Yukimura: Yes, last week when we were talking about moving to a decision, we did not talk about limiting the debate and the discussion about Teen Court and other related matters. This is an extreme abbreviation or curtailment of the discussion which I feel is relevant and I think a review of the Federal Law will show that it is relevant. So if we do not want to defer, then we have to vote, but my deferral is so we can keep Keiki P.O.H.A.K.U. alive.

Chair Furfaro: Okay. Any further discussion from the Members?  
Mr. Chang, I will recognize you a second time.

Mr. Chang: I just have a question for the Vice Chair. Can you clarify about what you mean by "keeping Keiki P.O.H.A.K.U. alive?"

Ms. Yukimura: Well because if we vote here and we vote it down, it does not have enough votes, then it dies. So a deferral is more important to keep it alive.

Chair Furfaro: You still have the floor, Mr. Chang, if you are finished?

Mr. Chang: I am done. Thank you.

Chair Furfaro: I will move on. Are there any other members that want to speak on this? On that note, Mr. Clerk, I will go ahead and suspend the rules. Let us continue with those that signed up for testimony.

There being no objections, the rules were suspended.

Ms. Dunbar: Elaine Dunbar again. Thank you, Chair, Councilmembers, for resolving that problem. I would also like to ask that the County Attorney, in the spirit of the Sunshine Law and transparency, submit an opinion for the public on that ethics decision. The agenda today is the P.O.H.A.K.U. program for the children. I feel like I am in the Miami Everglades already with all

of the alligators around and there is a lot of awful allegations and it has become a very sick, diseased situation in this County and now it has spilled over onto the children, because the adults cannot act like grownups. I like the idea of the P.O.H.A.K.U. program. I really, really do. Any diversion programs like this that are a precursor to a rehab and possibly a rehab would not be necessary if these diversion programs were in place. I like the name of this program, "P.O.H.A.K.U.," and I think it probably instills a sense of pride in the kids that they are part of P.O.H.A.K.U. It is a well-chosen name. It is only \$35,000.00. I cannot believe this County is disputing like this over \$35,000.00 that is going to help the children. JoAnn Yukimura, it is commendable that you have put in so many hours researching this. I only wish that you had put in that many hours researching the hundreds of thousands of dollars that you gave to that stupid marathon with taxpayer money.

Chair Furfaro: Excuse me, Elaine, I am going to ask you to please manage our rules.

Ms. Dunbar: Alright. I am upset.

Chair Furfaro: We do not need to be disrespectful.

Ms. Dunbar: This stuff going on in County, this disease, this sickness has to stop. Hundreds of thousands of dollars went to a marathon for a private industry and you used, approved tax dollars to do this with. This is only \$35,000.00. I am wondering what could possibly get done with \$35,000.00? It is just a small amount and it is a Federal grant. It is not even taxpayer money and you are objecting to it. What is going on with you? And you say that if it is deferred again, it can keep the P.O.H.A.K.U. program alive. Every deferral is depriving those children of a chance to get this program going. All you have to do is vote yes today and it will be kept alive. It is as simple as that. It is \$35,000.00. Give it the benefit of the doubt. What is wrong with that?

Chair Furfaro: Elaine, your time is up.

Ms. Yukimura: I have a question.

Chair Furfaro: Elaine, Vice Chair Yukimura has a question and when she poses the question, again, I want to make sure, let us not encroach on personal vilification and so forth. Let us work within the Council rules.

Ms. Yukimura: First, Elaine, we did provide moneys for the P.O.H.A.K.U. program, and that was highly mismanaged. That is why there are some questions about—

Ms. Dunbar: Excuse me, Sir, point of order.

Ms. Yukimura: That is why there are some questions—

Chair Furfaro: You do not call a point of order.

Ms. Dunbar: I am asking you to call it because she is disobeying what you just said.

Chair Furfaro: I will have you put out of Chambers.

Ms. Dunbar: I do not care, Mr. Furfaro.

Chair Furfaro: I know you do not care, but you do not overrule me in my Chambers.

Ms. Dunbar: I am not trying to do that, Mr. Chair.

Chair Furfaro: I am saying to you right now, I am going to direct this question to the Vice Chair. Your tone needs to be in the form of our rules.

Ms. Dunbar: Thank you.

Chair Furfaro: Vice Chair Yukimura, you do know what the agenda item is here and it is like the interpretation I made for Mr. Bynum, stay focused on today's agenda item. Now everybody let us learn to live aloha. Aloha is more than just finding conflict resolution, but it is about being respectful. Let us all start with that. Please.

Ms. Dunbar: Thank you, Mr. Chair.

Ms. Yukimura: So my question is what are the grounds that you are asking for Tim Bynum to be recused?

Chair Furfaro: You do not have to answer that question.

Ms. Dunbar: I am sorry, I thought we were talking about agenda item No. 336.

Ms. Yukimura: This is related to the agenda item. There is not a person to vote on this issue, so you raised the issue and I am asking you the grounds for raising the issue. What are your reasons for raising the issue?

Ms. Dunbar: Part of what I discussed earlier and that is that the personal, selfish, and self-centered personalities over principles have invaded this Council. We need to get on with P.O.H.A.K.U. It is important for the children. Do you not agree?

Ms. Yukimura: So are you aware that there is an ethics opinion from the Board of Ethics which is the definer of ethics and conflicts of interest that clears Mr. Bynum on cases like this?

Mr. Rapozo: Mr. Chair, I am going to raise the point again and I am really getting tired of having to raise the point of order, Rule 13c. Keiki P.O.H.A.K.U. is the issue to be discussed.

Ms. Yukimura: Mr. Chair?

Mr. Rapozo: That was my point. Hang on, JoAnn.

Chair Furfaro: You raised the point and the point of order in our rules is that is then interpreted by the Chair and you are raising 13c. This discussion deals with the agenda item, please confine our comments to today's agenda item. Are you finished with your questions?

Ms. Yukimura: I have not gotten the answer to my question.

Chair Furfaro: Well, she does not necessarily need to answer it.

Ms. Dunbar: It is not regarding the agenda item.

Ms. Yukimura: Excuse me.

Ms. Dunbar: Excuse me, ma'am, I am not an attorney.

Chair Furfaro: We are in recess.

Ms. Yukimura: Thank you.

There being no objections, the meeting recessed at 10:16 a.m.

The meeting reconvened at 10:25 a.m., and proceeded as follows:

Chair Furfaro: We are back in session and I am going to ask that we go to the next speaker.

Mr. Watanabe: Council Chair, the next speaker is Ken Taylor.

Chair Furfaro: Very good.

KEN TAYLOR: Chair, members of Council, my name is Ken Taylor. I first want to comment on Ms. Dunbar's request for Tim's recusal this morning and I think under the circumstances, Tim has done the right thing. I think Government, when you have a potential or even a thought that there may be a conflict, it should be eliminated by excusing one's self. I think that has been done and I appreciate that. I am really disappointed that this Council has messed with this process of putting this program forward. It has been months. I believe the last time it was before you, there was five hours spent. I do not know how much time has been spent with County staff and the Prosecutor's Office's staff, researching all of it and answering all of these questions for a simple \$35,000.00 to add one more opportunity to serve the young people of this County. It just does not make any sense, and compared to the years that I have been here watching this County operate on approving many, many grant requests. This monkey business is ridiculous. It is unfortunate that we have allowed personal endeavors to get involved in decision-making for the County. I think it should be a yes-vote and move this process forward and take care of the young people and stop fighting your own little battles in lieu of taking care of the community. Please, please bring this to a vote, an affirmative vote and let us move on with it. We do not need any more deferrals on this matter. Thank you.

Chair Furfaro: Questions for Ken?

Ms. Yukimura: Yes.

Chair Furfaro: Vice Chair Yukimura, you have the floor.

Ms. Yukimura: Yes, Ken. Since you are advocating the program, would you tell me how the program will be diverting the young people who have

entered the criminal justice system as between Teen Court and this Keiki P.O.H.A.K.U.?

Mr. Taylor: Well, it is my understanding that this is just another option.

Ms. Yukimura: Right, but how are you going to choose which is appropriate for the child?

Mr. Taylor: I am not quite sure what the program is or how it is administered.

Ms. Yukimura: Exactly, that is one of the things that we are asking about which we need to know because it is critical for the operation of the program.

Mr. Taylor: I do not think it is your job to micromanage any department in County.

Ms. Yukimura: I am not trying to micromanage, but just trying to find out how the diversion will be made? You do not think that is a relevant question to ask?

Mr. Taylor: I think that when you go back and look at the records of how you have handled grant requests from all departments, never once—

Ms. Yukimura: That is not relevant to the point. The point is is the program well-designed? That is accountability. Why would we give money to a program that is not well-designed that might cause mis-diversions and might cause the problems to the life of the children and their families?

Mr. Taylor: I think you could approve this project and send it forward with your concerns and ask for additional feedback.

Ms. Yukimura: Why would we not ask it ahead of time and be proactive to make sure that the program is well-thought through?

Mr. Taylor: I do not have any problem with the project going forward and being well-administered. I think there are a lot of capable people in the back of the room.

Ms. Yukimura: I will be asking questions of those capable people. Thank you.

Chair Furfaro: Mr. Rapozo, you have the floor.

Mr. Rapozo: Ken, were you here at last week's meeting?

Mr. Taylor: I was here in the morning, but not the afternoon.

Mr. Rapozo: I cannot remember if you were here when we had the discussion, but do you remember that question being asked? Do you remember the answer being that Teen Court was for the first time offenders and this program would be for second, third, and fourth-time offenders? I am not sure you were here. The only reason I ask is because I think that question has been answered.

Mr. Taylor: I think I have read something about that.

Mr. Rapozo: I do not remember. I remember you leaving early last week. I just wanted to know if you were here, thank you.

Chair Furfaro: Mr. Chang, you have the floor.

Mr. Chang: Thank you, Chairman. Ken, thank you for being here, as always. How long have you been on Kaua'i?

Mr. Taylor: Going on nine years.

Mr. Chang: I beg your pardon?

Mr. Taylor: Going on nine years.

Mr. Chang: We have obviously seen you around the community at a lot of the cultural events here. Do you believe that the Hawaiian values of our host culture here is important not just to the adults, but specifically to the children?

Mr. Taylor: I am very, very involved with the local culture, yes.

Mr. Chang: Thank you. Because I want to just say what P.O.H.A.K.U.—we talk about P.O.H.A.K.U. but I always want to let the public know what it really stands for. When we talk about “productive optimism helps all Kaua'i unite,” you are aware that this particular program is going to instill Hawaiian values to the children, both those that have moved and those born and raised here. So do you believe those Hawaiian values can help kids that the nationally modeled Teen Court could not necessarily help? But do you believe this program could help?

Mr. Taylor: Absolutely.

Mr. Chang: Okay, thank you very much.

Chair Furfaro: Thank you. No further questions, Ken. Let us go to the next speaker.

BRYSON PONCE, Representing S.H.O.P.O.: Good morning Council Chair, Councilmembers. My name is Bryson Ponce and I represent about 2,800 Police Officers Statewide with the Police Union representing S.H.O.P.O.

First of all, let me start by saying that the Police Union supports the Keiki P.O.H.A.K.U. Program. The reason being that we know it works. In Maui they started the P.O.I. Program, which is something very similar that has been in effect for quite some time and we got a lot of our Officers, both in the management realm and in the bargaining unit that go out and they actually work with the kids. They mentor them and do a lot of cultural things with them. The part of this program—if you look at the structure over here in Kaua'i, and to have another type of diversionary program, I think it only benefits the youth. And for this particular issue, I am going to ask...humbly ask that you folks support it, because it is a good program. We support it. It is a good program. Now, sometimes you talk about deferrals? When it comes to the youth, the Keiki here on Kaua'i, we cannot wait to keep deferring things, because they need the support. They need the services. They

need the mentorship right now. We have seen where sometimes they do not get that, and they fall through the cracks, and I can talk to you outside of here about specific cases where they did not have the program to go into until quite some time, and things turned out bad, whether it be suicide or some other type of violent criminal act that if caught earlier, could have been nipped in the bud right away. As far as the difference between the Keiki P.O.H.A.K.U. Program and Teen Court, there is nothing wrong with Teen Court, for first time offenders, based on the type of offenses committed, but sometimes the kids get tired of going to the Kapa'a Neighborhood Center and raking leaves on the weekend or sitting in the office doing counseling. Maybe they want to get more involved in the field, not necessarily a full-on boot camp military-style, but with more mentorship out there with some cultural programs that will really stir their interests and get them thinking about how to change their lives and how to better themselves and be real proactive in the community.

I bring this up, 9-11, because we just went through it recently. All the information, the technology and everything that was available was not shared. Well, what happened? A couple months later, a major tragedy. Please, let us not use any type of politics right now to get in the way of what is necessary and important. Yes, it is a political year for this issue. Please everybody put it on the side, and there will be other issues to battle, but this issue with the *keiki*, let us approve it and get this thing going. That is all I have got to say.

Chair Furfaro: Thank you very much for being here. I have a question for you. Am I correct in my interpretation of the acronym on Maui, because the focus is on young people? And that acronym, does that stand for "People of Importance?"

Mr. Ponce: Positive Optimism Intervention.

Chair Furfaro: Okay. That is the acronym on Maui. So we will take my version of "people of importance" out.

Mr. Ponce: That is a good one.

Chair Furfaro: The point is that the kids are important.

Mr. Ponce: They are.

Chair Furfaro: Thank you. Are there any questions? Mr. Rapozo then Vice Chair Yukimura.

Mr. Rapozo: Thank you. Thank you for being here, Sir. You talk about the Maui program. Are you familiar or have enough information on the Maui program as to how it is run? How it's funded? And if not, that is fine.

Mr. Ponce: I got some basic info, because I have friends who are part of it.

Mr. Rapozo: Is it a volunteer program or the Officers are paid to be part of it?

Mr. Ponce: Volunteer.



Mr. Rapozo: What about the counselors? The reason I bring it up is because we have a letter from LaVerne Bishop dated October 2, which made it to the media before I got to see it as well. That is interesting. I am assuming that someone on this Council is feeding the media. In that letter she talks about—she talks about the P.O.I. Program being funded with \$160,000.00, but using volunteer Police Officers. And I called Maui Police yesterday, and they have four counselors. They have a supervising counselor and what I was told is that the Officers...they have some volunteers. I mean obviously if you want to help they will use the volunteers, but the Maui Police Department Officers support the program, even on duty. So it is not a volunteer program. It is a program funded with \$160,000.00. I just wanted to clarify that because the problem with this issue, and I think you alluded to it, a lot of misstatements have been sent out and that stuff grows, especially in the media, and I can only ask that the media validate before they print something about Maui and P.O.I., to call them. Call them up and take the minute and say, "Hey, I am the newspaper..." They do not do it. Now, the people say, "Wow, what is going on? They have \$160,000.00..." The cancer spread and all we are trying to do is get the program off the ground. As far as you know, are you aware that the...

Mr. Ponce: They have both. Like you said, they have the Police Department in Maui committed and people are on paid time. They have got volunteers coming on their own time, too. So they have both contributing to the program in Maui.

Mr. Rapozo: Thank you very much.

Chair Furfaro: Vice Chair Yukimura, you have the floor.

Ms. Yukimura: Thank you so much for coming.

Mr. Ponce: Not a problem.

Ms. Yukimura: It is exciting to think about a culturally-based program and if there is a model on another County that is really good, too. This P.O.I. Program, is it run by the Prosecuting Attorney's Office?

Mr. Ponce: I am not sure.

Ms. Yukimura: Okay. How do they work this fair labor standards thing in terms of overtime costs to the Police? Because what we learned is sometimes even when it is so-called voluntary, you still have to pay overtime?

Mr. Ponce: That is a good question.

Ms. Yukimura: So how do they work that?

Mr. Ponce: Self-initiated voluntary from an Officer is fine. It is different from somebody soliciting Officers to volunteer. In other words, if I wanted to go and help out with traffic control, I wanted to do that because that is my church, I can sign a waiver holding the County not liable if I twist my ankle or anything like that. It is different from the Officer being solicited, "Can you guys help out at the Hospice In The Sky" or another event? Those are the differences. The employee has to want to generate the volunteer work themselves.

Ms. Yukimura: That is the first time I heard that distinction and it is really helpful. At least it gives you some guidance or baseline on how you know whether overtime will be owed or not. It is your understanding that this program works with second and third time offenders only? The P.O.I. Program?

Mr. Ponce: Yes. Mostly. Second and third time non-violent offenders. You have the chronic shoplifting and other types of thefts, and burglaries get borderline, if someone is in the home sleeping or if somebody is not in the home type of case-by-case basis.

Ms. Yukimura: S.H.O.P.O. supports Teen Court too?

Mr. Ponce: Yes. Why not? The programs are good programs. What we are saying here is that if there is an option to have another program, if you have got the grant and the funding, we support it because it is good. It is a good thing. I cannot see the negative. I know the issue and I do not want to go into detail about the back and forth thing with procurement and this and that. I think what we have to look at is especially for our island, right now, we do not have a detention facility. And it is so hard for the kids to get into a program unless they run away 50 times, commit 15 burglaries before they are sent to Honolulu. In the meantime if we can have more diversion programs and more intervention, that will not only help the kids, but help a lot of the residents here with the frustration. "Your kid broke into my house, and you better do something about that. I am going to come after you." That is happening in the community.

Ms. Yukimura: I think even LaVerne Bishop herself, from Teen Court, said, "The sooner you can intervene, that kids sometimes—may be up to ten interfaces with the law before they actually get charged." There is different ways and if you can intervene at those points, the sooner you intervene the better because the deeper they get into the Criminal Justice System, the less chance they have coming out of it.

Mr. Ponce: That is true. And the more options you have, that is also better.

Mr. Yukimura: Right. None of us disagree with diversion or more options. But the question is, how do they work together? How do you know which kid goes into which program? Teen Court has a 90% rate of no recidivism, right? And so where do you go? One of our concerns was the fact that for five months kids have not been referred to the one diversion program that exists on the island now. Is it your understanding that Keiki P.O.H.A.K.U. would be for second and third-time offenders and Teen Court would be for first-time offenders?

Mr. Ponce: I am not positive on what structure will happen, but just for me, this is my own thinking of it. I am not part of the program right now, but I look at it really in a common sense type of fashion. It has got to be based on the type of offense committed and the individual offender too. Some kids respond better to indoor type of counseling that happens in a room. Other kids will respond better to being in the field, doing things, that they got to get their hands dirty and they have to break sweat a little bit and be mentored by somebody else. So I think it will be both, based on the individual child or teen and the types of crimes committed and the venue in which, whether it is Teen Court or Keiki P.O.H.A.K.U., what would best help them to get over. The recidivism rate from the

P.O.I. Program in Maui is really low because it is working. We want some other option here too. So it is a good program.

Ms. Yukimura: So you agree though that how that diversion is made has to be very carefully done?

Mr. Ponce: Yes, sure. You have to put thought into it.

Ms. Yukimura: Thank you very much.

Mr. Ponce: Thank you.

Chair Furfaro: Councilmember Nakamura. We still have questions for you.

Ms. Nakamura: Thank you very much for your insight. I think it has been very helpful to me, and my understanding is that the P.O.I. Project is run out of Maui Police Department?

Mr. Ponce: Yes.

Ms. Nakamura: Which is similar to K.P.A.L., which is basically Officers volunteer or hopefully will get paid overtime do this work and I have a concern about what it is really going to take to make a program like this succeed and if Maui is paying \$160,000.00 to make the program work successfully with reduced recidivism, what will it take for Kaua'i to do it right?

Mr. Ponce: What you have to understand, Councilwoman, is that on Maui they have got a bigger force than us. Just like Honolulu where they have got people dedicated to K.P.A.L. and paid on-staff and to other youth programs, unfortunately we are not big enough and we do not have that.

Ms. Nakamura: Exactly.

Mr. Ponce: For us, if we get this type of grant and have people coming forward and willing to volunteer to help, this is the start. That is how K.P.A.L. started, right? From there, hopefully, if we see the value, and it takes off, and it can show and it is proven, then maybe it can get funded or more resources can get put into it. It has got to start somewhere.

Ms. Nakamura: The question, I guess I want to get an idea and maybe I will follow-up with the Prosecutor, but I think the question about do you think it is more appropriate to be in the Prosecutor's Office or in the Police Department? If we are doing this right and do this correctly, where does this program belong?

Mr. Ponce: There are so many programs that I would like to see us handle within the Police Department, but we do not have the resources.

Ms. Nakamura: That is one of the concerns, with the high vacancy rates, I think that is the main priority is to get those filled. And programs like this kind of put to the back burner, because we need to really fill those vacancies first.

Mr. Ponce: That is true, but I do not see anything negative with the program being handled by the Prosecutor's Office. I just wanted to share that with you.

Ms. Nakamura: Thank you.

Chair Furfaro: Mr. Rapozo.

Mr. Rapozo: Thank you. Does the Police Department participate in the judicial process? Do they determine a first-time offender, who goes to court and who goes...

Mr. Ponce: No.

Mr. Rapozo: That is not your function.

Mr. Ponce: Yes, it is not.

Mr. Rapozo: That is a Prosecutor function.

Mr. Ponce: When you talk about diversion, yes, we do not get involved.

Mr. Rapozo: It is starting to sound like maybe there is a lack of confidence with the Prosecutor's Office and they do not want the Prosecutor's Office to handle any of the programs and I do not know if you are aware, Bryson, but are you aware that when we were provided with the exempt posting for professional services. What the Prosecutor's Office will do is these services will be contracted out by a professional company that does diversionary programs. So, it is not going to be the Prosecutor's Office. Counseling—it is not going to be the Prosecutor's Office, doing the training, it is going to be done by a private company. Were you aware of that, by the way?

Mr. Ponce: Slightly.

Mr. Rapozo: The Prosecutor's Office is the administering department. The money has to flow through a department and that is what this grant is about, but the Police, and I know this because I was a cop, the Police do not determine—"Okay, let us see what we are going to do with you. No you are going to jail." That is what the Prosecutors do and that is what this program does. Thank you.

Chair Furfaro: Mr. Chang, do you have a question?

Mr. Chang: No, Sir.

Chair Furfaro: Thank you very much for being here. Do we have other speakers? I did not see your hand.

Ms. Yukimura: Thank you.

Chair Furfaro: Vice Chair, you have the floor.

Ms. Yukimura: Thank you. I have a follow-up question on the recidivism rate of the P.O.I. Program, do you know what it is?

Mr. Ponce: I do not know it offhand, but I can get it for you, because my friend is part of the program.

Ms. Yukimura: That would be good.

Mr. Ponce: It was really good, though.

Ms. Yukimura: That is wonderful to hear. Over what period of time has the program been in place?

Mr. Ponce: I want to say—I know he talked about it at least two years, he has a record of his participation of it and all the recidivism numbers. It could go back at least three or four years.

Ms. Yukimura: If you could get that information, that would be great. Thank you very much.

Chair Furfaro: Any more questions? If not, thank you very much. Next speaker, please.

ALEJANDRE QUIBILAN, Assistant Chief, Kaua'i Police Department: Good morning, Chair Furfaro and Councilmembers. For the record, Ale Quibilan, Assistant Chief, Kaua'i Police Department. I am currently filling in for Chief Perry as he is at a conference off-island. First of all, I want to say upfront that the Kaua'i Police Department is in support of the Keiki P.O.H.A.K.U. Program. I also want to say upfront that I do not claim to know a whole lot about the program, how it is going to be administered/managed, who is in charge, selection process, funding, and contracts, et cetera. I do not have the knowledge in that area. I do, however, want to speak about experience and the Officers who sit behind me and those Officers who are on the street today as we speak. They are out there 24/7. With almost 30 years of experience in the Kaua'i Police Department, some of the items which I was planning to talk about has been touched upon with the previous speaker, with Bryson. They were things like recidivism. We know that Officers who have done this job as long as I have or with the Officers behind me who average of 20 years of experience know that—we see the same people, a small percentage of people out there commit the majority of the crimes. Of that small percentage, we tend to see them repeatedly in our system. So looking back, and looking at today, in comparison as far as, what was done in the past and what can be done today? Again to this day, when I was on the street chasing a teenager, who is now in his 40's or her 40's still committing crimes, and it is a generational issue where the next generation is committing the crimes along with the past generation. Again, diversion programs, I do not claim to know all of the information about it, but I do know that in the past 22 years or almost 23 years, we have had the same amount of street Officers, Police Officers on the streets. Crimes have been on the increase over those two decades. We address those issues. Any program that could assist the Officers with their caseload and if we can prevent or address an individual, so that person does not re-offend again, that is a plus for us. I am not going to—this is not a forum to address our issues in the department as far as staffing, but it is what it is. We do have a higher caseload than we did 20 years ago. A program such as this, the Keiki P.O.H.A.K.U. Program and any other diversion program, whether it is addressing adults, drugs, mental issues, other concerns, these organizations have

come to the Police Department and we have supported them all because it does help us. It does take the workload off, and provides us much-needed assistance. And we just want to address this issue at the earliest onset, so it does not reoccur again. I think that is our current position at this point. Basically that is all I wanted to say this morning. Thank you.

Chair Furfaro: Questions? Vice Chair Yukimura, did have you a question?

Ms. Yukimura: Hi, Assistant Chief.

Mr. Quibilan: Good morning, Vice Chair.

Ms. Yukimura: Thank you for being here. Does the Police make referrals to Teen Court?

Mr. Quibilan: I do not have that information. I do not believe we do.

Ms. Yukimura: Okay. Because Councilmember Rapozo questioned whether referrals are only made from the Prosecuting Attorney's Office, but I do not believe that is the case. I think the Police Department makes referrals, too. But if you could check into that and let us know. So in your support of all diversion programs, then the Police Department also supports Teen Court as a diversion program?

Mr. Quibilan: Yes.

Ms. Yukimura: Okay. Thank you.

Chair Furfaro: Councilmember Nakamura?

Ms. Nakamura: Thank you very much for your testimony. I wanted to ask you, for a program like this, there seems to be a lot going for it. If we are going to move in this direction, we really want to make sure it succeeds to do everything that we want it to do, and to fill in the gaps. And recognizing— so my question is on the— we know on the program side, the funding needs to be there, needs to be strong and so forth. On the K.P.D. side, what do you think will be needed to make this program successful?

Mr. Quibilan: To answer the question, I think the basic answer would be a close working relationship with the Prosecutor's Office or whoever is handling this program. There has to be a close working relationship in order to make it work.

Ms. Nakamura: In terms of getting Officers to participate, or to volunteer, do you think that will happen naturally or do you think we are going to need to put in some overtime to get Officers involved in the program as they have on Maui?

Mr. Quibilan: I think it all depends on how the program is administered and what types of programs will be afforded to the juvenile that is in the program. We do have a number of employees, both sworn and volunteer, that do participate in community—I guess most of it are sporting events like soccer,

football, softball, baseball, and Little League; those things. So we see that the primary focus is sports, but if we are talking about more like cultural-type, we may have employees who are interested, who are focused maybe primarily with the church functions, church organizations, and Lion's Clubs, and these other types of organizations out in the community that want to participate in this program. Our employees do want that part of our organization and we want to participate.

Ms. Nakamura: One of the things that we did in this last budget that was approved by the Council, we put in a line item for K.P.A.L. overtime to encourage that and not to burn out the Officers who are involved. Do you think something like that would help for something like a Keiki P.O.H.A.K.U. or other diversionary program?

Mr. Quibilan: I think it would. I think having the available funding to continue the program, yes.

Ms. Nakamura: Thank you very much.

Mr. Quibilan: Thank you.

Chair Furfaro: Mr. Rapozo.

Mr. Rapozo: You mentioned that you think what needs to happen is a good relationship with the Prosecutor's Office. In your opinion is that occurring right now?

Mr. Quibilan: It is.

Mr. Rapozo: Do you believe that the current relationship between you and the Prosecuting Attorney's Administration at the current time will be conducive to a successful Keiki P.O.H.A.K.U. Program?

Mr. Quibilan: It will.

Mr. Rapozo: Thank you.

Chair Furfaro: Second time, Vice Chair Yukimura.

Ms. Yukimura: Yes, just a follow-up from the previous questions. How do you see the Police Department involved in the Keiki P.O.H.A.K.U. Program?

Mr. Quibilan: How?

Ms. Yukimura: Yes.

Mr. Quibilan: At this point, I cannot answer the question until we have further meetings on how to coordinate that.

Ms. Yukimura: So in developing the grant proposal, that has not been addressed exactly how the Police Department will be involved, because how do you know how much money you need to, as Councilmember Nakamura said, to make it a successful program?

Mr. Quibilan: Again, Vice Chair, I am filling in for the Chief and whatever discussions he has had with the Prosecutor's Office, I am not aware of those detailed conversations and discussions.

Ms. Yukimura: So it could involve overtime payments, but you do not know at this point how much that might be?

Mr. Quibilan: Correct.

Ms. Yukimura: Will you go back to the Chief and ask him if he knows?

Mr. Quibilan: Yes.

Ms. Yukimura: Thank you.

Mr. Rapozo: One last question.

Chair Furfaro: Recognizing you a second time, Mr. Rapozo.

Mr. Rapozo: Chief, do you even know if K.P.D. is going to be involved with this?

Mr. Quibilan: Not at this time.

Mr. Rapozo: Because I think the only reference to Maui or this program that Maui has a P.O.I. Project, but the Maui P.O.I. Project from what I read in the grant application was really to infuse that cultural component into the diversionary program. But it is not the P.O.I. Program. I do not even know but maybe when the Prosecutor comes up later, I do not remember reading anything that the Police Department would actually be involved in this program. I could be wrong. It is just from what I have been reading. I believe it was going to be outsourced to a private company. So you do not know any part of that?

Mr. Quibilan: No, I do not.

Mr. Rapozo: Thank you.

Chair Furfaro: Any questions? I will recognize you a third time, Vice Chair Yukimura.

Ms. Yukimura: Thank you, I am just trying to put it all together. The P.O.I. Program has been mentioned as an example of what the Keiki P.O.H.A.K.U. Program could do and the P.O.I. Program involves Police Officers but Keiki P.O.H.A.K.U., is not going to involve Police Officers?

Mr. Quibilan: I have to respond to that because I do not have any information personally on how the Maui P.O.I. Program is being administered/managed and who participates in that. So to do a comparison, I cannot respond to that question.

Ms. Yukimura: Right. Well, when people put forth a recidivism rate and say it is a really good program and we are going to do it like this and there is a thing called fidelity, if you want the results, you have to do it like the program



that is successful. That is a real common understanding in social science programming. That is why I asked the question. Thank you.

Chair Furfaro: Okay. Chief, thank you very much.

Mr. Quibilan: Thank you.

Chair Furfaro: Next speaker, please.

BILL ARAKAKI, Kaua'i Complex Area Superintendent, Department of Education: Good morning Chair and Councilmembers. My name is Bill Arakaki. I am the Kaua'i Complex Area Superintendent. As far as details of each program, I am not able to give you that. I am sure there are speakers that will come on today to tell you what the program is all about.

Before I begin, I would like to thank the Councilmembers and the gentlemen and women behind us in law enforcement who have supported our children for the Department of Education (D.O.E.). For me, the D.O.E. has been the benefactors of all the programs supported by the County and everyone here today. So, like the Keiki P.O.H.A.K.U. Program, it helps us service children as far as crime, how they are involved, and how to support them to not continue in that path. As you know, Teen Court and Hale 'Ōpio has provided programs for our D.O.E. schools so we benefit from programs who are funded through all of you here. It is crucial to have different types of programs. Teen Court will service a group of students. The P.O.H.A.K.U. program also has potential to service students that may not fit into the Teen Court arena. I think the thing that is exciting about the P.O.H.A.K.U. program is that when they talk about culturally-based programs, I think since before Mayor Carvalho and also with Mayor Baptiste...Kaua'i Aloha and the values of how we live on this island with the sense of place, to me it is something that is very special here. How do we connect our children to the values of what we need to do as a community? We too, in the Department, have our *aloha* values that Elementary Schools promote each month. How is that connected to what happens in real life to the children as they move on from Elementary, to Middle, and to High School? So with this program, speaking about culturally-based intervention is something that may turn that switch on and connect the things that we try to do within our system to make it happen. All the programs that we work with, I see you folks at the shopping malls and different events. I think this is an opportunity for all of us to work together. As far as commitments from the D.O.E., I cannot say that we are going to provide funding or resources, but whatever we can do to help reinforce the efforts of both Teen Court and the P.O.H.A.K.U. programs, we will do what we can. We may be promoting the program within our schools, so that people are aware of it. That may be a way in which we can support it. But if we are able to have two programs for diversionary, it would be great because it just provides more opportunities for our children, and we must not forget the families also. How do we support the families so that as the children move on, and a lot of juvenile offenders, we need to work with the families, because it may be dysfunctional or things may not be working too, so the culturally-based connection that may be something that is important and we do support both programs.

Chair Furfaro: Mr. Chang.

Mr. Chang: Thank you for being here. Thank you for mentioning the parents. We talked a little bit about the neighbors of crime victims, but obviously, the emphasis is on the children but it affects the whole family. I

know that in a lot of ways, this also could be a domestic issue. I wanted to ask you, as I was looking through the minutes and I know that some of the Board Members, the Coalition, is no longer on the Committee. We do have some new ones, but as of recent, in September, I used the phrase last week as being "near unanimous." But would you say it was pretty near unanimous that your Committee is supporting this program whole heartedly?

Mr. Arakaki: I believe so. I am a member of that Committee. The D.O.E. is represented there and shares information regarding what students are doing as far as Chapter 19 behaviors, which will lead to enforcement issues if they get into crime because we do call Police to arrest for different situations. I was not able to meet that day. I was at a State meeting in O'ahu. Basically, I understand that it was a unanimous decision to support the program and eventually, I believe there is going to be a support letter to reinforce that because we are able to do that so when the grant is submitted, we have that support document for the grant process.

Mr. Chang: The reason I asked that question I had verbal communication from Members that there was to have been a written letter in support, which I believe was going to be coming out of the Office of Economic Development. I have been trying to get that letter, but I was glad you were able to answer that because that is what my direction was that unified we would have gotten something in writing to support this program. Thank you.

Chair Furfaro: Thank you very much for being here. You are referencing the Mayor's Crime Task Force?

Mr. Arakaki: No, this is the Kaua'i Juvenile Crime Enforcement Coalition. I am part of that group also.

Chair Furfaro: So there are two groups, it is not a Subcommittee of the same group?

Mr. Arakaki: I think so. Yes.

Chair Furfaro: So the members of the group that you just mentioned, besides yourself includes Sue Kanoho, Tracy Yamashita, Aloha Visitor's Society, (inaudible)—

Mr. Arakaki: That is another group.

Chair Furfaro: That is not the one you are associated with?

Mr. Arakaki: No.

Chair Furfaro: I just want to make it clear. Would you tell me who is in the group—who are the members of your Ad-Hoc Committee?

Mr. Arakaki: Previously it was David Lamb. I do not know if he is still there. The Prosecutor's Office is there, myself, and Maryanne Kusaka has removed herself and she is retired so she is not there. Theresa Koki is there and other Members, I am not too sure who the others are.

Mr. Chang: Is Ed Justus on this task force?

Ms. Yukimura: No.

Chair Furfaro: No, Ed Justus is on this task force.

Mr. Arakaki: I am with the Kaua'i Juvenile Crime Enforcement Coalition, not the Mayor's Task Force.

Chair Furfaro: The Mayor's Task Force is something else.

Mr. Arakaki: Yes.

Chair Furfaro: I just wanted to get that clear. I will pass back your piece if I could pass this to Dickie. That is the only question I have. I wanted to make sure I understand that we are getting endorsements from both, but I wanted to make sure that they are not one in the same. They are not one in the same?

Mr. Arakaki: No.

Chair Furfaro: Are there any additional questions for Bill? Vice Chair Yukimura.

Ms. Yukimura: Bill, thank you for being here and as an Administrator, you know the difference between a great concept and the implementation of the concept, right? So I hear you supporting the concept, which we all do. A culturally-based diversion program is a wonderful concept, but do you support the program's design?

Mr. Arakaki: As far as the details of the design, I am not sure. I think what you are alluding to is the accountability of how are we going to implement. No matter how much funding, it may be \$100,000.00 to \$35,000.00, how do we account that these programs are impacting the purpose of what it needs to do? And accountability meaning how we refer students into that program. It is a new program. Like any new program, I think the data will come forth as far as how it is working on Kaua'i. So as an Administrator, the concept is there. We may need to look at—again, I do not know if it is our Committee that looks at how it is structured or how things should be implemented because I think the grant proposal would indicate that, but I have not read the grant proposal. It is very crucial what you are looking at as far as data and how things are structured.

Ms. Yukimura: Before you do data, you want to look at the design that is producing the data, right? I mean, you design the program for as much success as possible, right? You do not think that was the job of the Juvenile Crime Enforcement Coalition to actually look at program design before you endorse it?

Mr. Arakaki: Yes. I think the concept, like I said, I do not know the details of that. I would need to read it. I believe the design being culturally-based is something that we have heard before. So that kind of caught the attention that it is something that may work. With the references from Maui and how they are working it, it is something that may be similar or if the structure is not different. I am not quite sure.

Ms. Yukimura: If it is not designed around Maui's program, you do not even talk about the results of Maui's program, right? So for me the question is how are the referrals made? If you have one or two or three or four Diversion Programs, how do you decide which is the best program? And do you not agree that is a really critical decision point in the implementation of the program?

Mr. Arakaki: For me, I do not think it should be a matter which is better than the other. The opportunity to have two Diversion Programs is something that would benefit the children.

Ms. Yukimura: Yes, but you have to choose one for the child. You are going to put the child in one or the other, right?

Mr. Arakaki: Well, the process of how a student or an offender is referred to a particular diversion program is something that is a logistical thing. For me as the Department, the more opportunities that we have for different programs are what we are looking for.

Ms. Yukimura: I understand that. That is not the question. The question is...

Chair Furfaro: Excuse me, Members, let him finish the answer to the first question, before we level another question. Finish your answer, please.

Mr. Arakaki: So basically, I think for myself as the Department, I am here to support that both programs is something that would benefit our community and our children.

Ms. Yukimura: So my question is, I do not question that you support both programs, but how do you choose which program that any particular child is to be diverted into?

Mr. Arakaki: From the discussion that we had here, Teen Court is for first-time offenders and not the violent felony type. The P.O.H.A.K.U. program will be offered to students or offenders that are second or third-time offenders and others that do not qualify for the Teen Court. It kind of fills the gap; that the ones that Teen Court is not servicing and do come back again, how do we support them and those that are not able to get into that program.

Ms. Yukimura: That is not my understanding of the Keiki P.O.H.A.K.U. proposal.

Mr. Arakaki: I think others can really explain that as far as that, but that is my understanding.

Ms. Yukimura: What if there is not that clear line, what is best way to make those diversions?

Mr. Arakaki: I think we need to—I guess the first step is to see if we can get funding to see if this could happen. Basically as far as the logistics on how people are referred, depending on the grant write-up. We are not the grant writers.

Ms. Yukimura: Thank you.

Chair Furfaro: Any other questions? Mr. Rapozo.

Mr. Rapozo: As a District Superintendent, you manage funds for Kaua'i?

Mr. Arakaki: Yes.

Mr. Rapozo: Do the Legislators call you up and tell you how to spend money or tell you what kid goes home or what kid goes to suspension or is that under your responsibility? I will have this question for the County Attorney later as far as the separation, because we are asking you, who have nothing to do with Keiki P.O.H.A.K.U., other than approving the funds.

Mr. Arakaki: Yes. Basically you are correct, how I manage and how we spend and implement policies and do the regulations is up to my system. Legislators will not tell me what student should be suspended.

Mr. Rapozo: Right. Ron Kouchi does not send you a list of 40 questions before he releases the funds, right? Or the Representatives?

Mr. Arakaki: No.

Mr. Rapozo: I just want to make sure we understand and I appreciate it and I have to apologize because you are being asked questions on administration of a program you do not administer. I think that is not fair. I appreciate your candid answer. And I appreciate your support because if there is anyone who knows the need, it is the D.O.E. and the K.P.D. And I have heard enough today. Thank you.

Mr. Arakaki: Thank you.

Chair Furfaro: Any other questions, Members?

Ms. Yukimura: I do.

Chair Furfaro: You do? Go right ahead.

Ms. Yukimura: Bill, I am not asking you to make a diversion criteria a certain way, I am just asking whether you have determined in endorsing the program, what that diversion process will be? It is important to the implementation of the program. It is my understanding of the role of the Juvenile Crime Enforcement Coalition that this is the kind of evaluation that is done in your committee.

Mr. Arakaki: I am not able to respond to that because I am not sure if I can. So I just cannot make a statement that may be incorrect.

Ms. Yukimura: Thank you.

Chair Furfaro: I would like to ask Wally Rezentes and Ernie Barreira to come up. After that I have two questions for the gentlemen, and then I am going to take a break for the captioner.

ERNEST BARREIRA, JR., Director of Budget and Purchasing: Good afternoon Council Chair, Councilmembers, Ernie Barreira, Budget and Purchasing Director.

WALLACE REZENTES, JR., Director of Finance: Good morning, Wally Rezentes, Finance Director.

Chair Furfaro: First question, Ernie. This money is grant money that goes to your Office for procurement?

Mr. Barreira: The money to acquire and procure this program I understand will be grant moneys. Yes, Sir.

Chair Furfaro: And all of the procurement steps met your Department's requirements?

Mr. Barreira: To the point where we do not yet have funds in-hand. Yes, Sir.

Chair Furfaro: Mr. Rezentes, as we go forward, I think you heard, I have restricted questions on Teen Court because I will post it on the agenda in the future. Let me ask you, was I correct in my assumption that funding that we might have gotten in for Teen Court was reduced when the State went through their difficult period?

Mr. Rezentes: I believe at one time the State Judiciary had funded that program a few years back, yes.

Chair Furfaro: Currently, has that program lost any County funding?

Mr. Rezentes: If it has lost County funding? The County funds, I believe, appropriates funds for Teen Court, yes.

Chair Furfaro: Can you clarify that one more time?

Mr. Rezentes: I believe that we process funding for Teen Court.

Chair Furfaro: If you could be prepared on the 17th with that information?

Mr. Rezentes: Sure.

Chair Furfaro: All of the t's are crossed and i's are dotted on the current grant application for Keiki P.O.H.A.K.U.?

Mr. Barreira: My understanding is that on the grant application side, as well as the procurement side, everything has been done as expected.

Chair Furfaro: On the procurement side, it is my understanding as stated earlier that services will be contracted to outside specialists. Is that your understanding in the procurement process too?

Mr. Barreira: Yes, Chair. If you look at the subject matter of the SP-07, the request for exemption, it outlines the services, and because of the dollar values involved, anything post \$25,000.00, we would strongly encourage implementation of a contract. I believe based on my discussions with the Prosecuting Attorney that is the intention.

Chair Furfaro: Gentlemen, stay close by. We are going to take a 10-minute break.

There being no objections, the meeting recessed at 11:21 a.m.

The meeting reconvened at 11:35 a.m., and proceeded as follows:

Chair Furfaro: We are back. You gentlemen were clear that I was calling you back, right?

There being no objections, the rules were suspended.

Mr. Barreira: Yes, Sir.

Chair Furfaro: Thank you. Are there any questions? Vice Chair Yukimura?

Ms. Yukimura: Thank you. I guess my question is how did this thing come to a procurement process without moneys? Without verification that there are even moneys available for this procurement?

Mr. Barreira: Customarily, Vice Chair, in terms of exempt procurements and also procurements involving Professional Services, this current procurement has both elements involved; we are not required at the point of solicitation evidence of funds being in existence, only because the obligation that is impacting the County occurs at the point of award and contract. Within the Hawai'i State Procurement Code, it specifically defines under Subchapter 309 that, "Prior to contracting we have an obligation to certify the existence of funds." So based on past practice there is no procedural or legal obligation to have confirmed those funds for exempt procurement prior to letting the solicitation.

Ms. Yukimura: This is a contract for Professional Services, not for a specific program?

Mr. Barreira: It is an exempt process, which exempted not competition, but exempted a process to enable the Prosecutor to use the Professional Services methodology. So it is defined in general terms as an example procurement using Professional Services.

Ms. Yukimura: But what are you exempting?

Mr. Barreira: We are exempting a process.

Ms. Yukimura: And what process are you exempting?

Mr. Barreira: Because the anticipated funding exceeded \$25,000.00, normally that would mandate a formal procurement under the Law. In this case we conducted analysis of whether or not to pursue the formal procurement

or to seek an exemption based on the particulars in the procurement. In this case based on information and consultation with the Prosecutor, it appeared to be a rather specifically-targeted type of services to be provided and it did not appear in my mind, based on the understanding of the Procurement Code, it would have been feasible to let a Request for Proposal for formal procurement, which is quite elaborate and time-consuming, because I believe the evaluative nature of Professional Services would have best met the intended outcome in terms of what the Prosecutor's services were being sought.

Ms. Yukimura: So that was a decision you made?

Mr. Barreira: I made that in consultation with my Specialist and in discussions with the Prosecutor's Office.

Ms. Yukimura: Okay. I do not know if I would agree with that decision, but you are the one to make it. So what is the status right now?

Mr. Barreira: All of the procedural requirements for the exemption were successfully completed. The posting as required by Law for seven days outlining the selection process to be followed, as well as the posting of the ad, inviting the submission of resumes. We have received resumes and we are now at the point that we are currently in abeyance with procurement pending with the receipt and confirmation of Finance.

Ms. Yukimura: How many responses have you received?

Mr. Barreira: Based on established policies and procedures as authorized by the Chief Procurement Officer, the Director of Finance, we are prohibited from discussing anything with regards to submissions of resumes or awards until the award is actually made.

Ms. Yukimura: Thank you.

Chair Furfaro: Mr. Rapozo?

Mr. Rapozo: Thank you very much. Is the exempt process used often in the County?

Mr. Barreira: It is the second-least used process.

Mr. Rapozo: Second-least used? That does not help me.

Mr. Barreira: I am sorry. There are seven major types of procurement.

Mr. Rapozo: I am only concerned about the exempt because Councilmember Yukimura says she does not agree with your decision to do it, but these things are posted publicly. Every exempt process or project is posted?

Mr. Barreira: Not every exemption, only exemptions that are considered discretionary under the Administrative Rules. There are approved exemptions by Statute and approved exemptions by Rule. Those do not require public posting, but those that are discretionary require seven-day posting.



Mr. Rapozo: How many exempt bids, or processes, let me call it a "process," how many do we deal with in a year?

Mr. Barreira: We specify and I could give you the logs.

Mr. Rapozo: I am just curious, just ballpark it, more than 10?

Mr. Barreira: Yes, Sir. More than ten.

Mr. Rapozo: More than 20?

Mr. Barreira: Depending on the year, it could be more than 20.

Mr. Rapozo: I think so, because I have seen them. It is not uncommon to go ahead and exempt procurement?

Mr. Barreira: It is permitted under the Rules.

Mr. Rapozo: And it is not uncommon?

Mr. Barreira: It is not uncommon.

Mr. Rapozo: Thank you.

Chair Furfaro: Gentlemen, thank you very much. You have questions for them? I thought we were going to call the County Attorney up?

Ms. Nakamura: I also have questions.

Chair Furfaro: Go right ahead.

Ms. Nakamura: Thank you. Thank you for being here. I wanted to find out, so with the request for exemption, the estimated cost of the program is \$65,000.00? So the budget that we received is \$35,000.00. Can you describe that?

Mr. Barreira: The SP-07 form, which is the request for exemption is populated by the Department Head. My recollection and I would let Prosecutor Iseri-Carvalho speak to that when she comes forward, but my understanding, as we entered into the grant application there was a certain pool of funds that might have been available that could have been larger, but based on the projected time at the point that the funds would be actually allocated, that funding source would have been diminished. But she could speak specifically to that. I recall that coming up in our conversation.

Ms. Nakamura: Okay. So since this was posted July 12, our budget, we received this budget—the actual Notice for Professional Services is for \$17,600.00. So when you do the request for exemption, is that supposed to be the total amount that you are going out or can it be a compilation?

Mr. Barreira: Because it is an exempt procurement, Councilmember, it could be an approximation; if we are not completely certain as in Professional Services we may list a ballpark figure of \$50,000.00. It could be \$45,000.00 or it could be \$52,000.00. It depends on the outcome of the procurement itself. But in this case—

Ms. Nakamura: This one is not to exceed \$17,600.00.

Mr. Barreira: Once again, I would hope that the Prosecutor can clarify, I think that was based on the projected amount of moneys that could be expended within the one year of the exemption. Exemptions are only good for one year and have to be re-posted and re-solicited every year.

Chair Furfaro: Ernie, as a follow-up question. As policy is, in my business experience you get approval on a purchase. There is a range of not less than, but cannot exceed more. Do you have a guideline for that? Is it like 5%? Does the County have a guideline for that?

Mr. Barreira: Only in terms of very rough applications in terms of change orders but that usually does not apply to procurement. For the most part, with the exception of exemptions, the dollar values are pretty defined.

Chair Furfaro: Okay. Thank you. Vice Chair Yukimura?

Ms. Yukimura: So I think the exemption for process is usually if the County Attorney wants a Special Counsel for a certain kind of legal service, right? Or the Planning Department wants historical consultation, right? And so it is a category of work. But in this case, there is a very specific program that is not perfunctory and has not been done before and it is a new service. Why would you go for a category rather than a specific program?

Mr. Barreira: I am not sure I understand your question. Let me try to answer it. If I am not answering your question, please let me know. Exemptions are used oftentimes under the Law and remember under the Law, you can exempt a process or you can exempt competition. If an exemption is an approved exemption by Law or Rule, you could simply come forth and say, "I exempt all competition and choose to select this vendor," being that it is in the best interest of the County and the Law so mandates. In the case of facilitators, for example, that is an approved exemption by Rule. We also use exemptions for process because another process might be appropriate for the given procurement or the goods or services being sought. In this case, based on my training and experience, and based on the information that I received from the Prosecutor, on this culturally-based diversion program it appeared that a protocol of Professional Services would best meet the procurement needs because it allows the convening of an evaluation selection committee to review the submission of resumes and best draw an analysis as to what resume and which company would be able to provide the best services.

Ms. Yukimura: Well the thing is, you have three people in the Prosecuting Attorney's Office that are going to be part of the Committee and none of them has real Social Services background in terms of the social development theory of young people, the Juvenile Diversion Program, or any of that. So how do we know that there will be proper evaluation?

Mr. Barreira: The evaluation criteria will be defined before the committee convenes and they will be obligated to follow that.

Ms. Yukimura: Who defines the evaluation criteria?

Mr. Barreira: The Committee itself will define the evaluation criteria.

Ms. Yukimura: How can they define evaluation criteria if they do not have expertise in the area?

Mr. Barreira: Generally speaking, Vice Chair, the expertise that we exercise in the Division of Purchasing is to ensure the compliance with the Procurement Code. The subject matter review and analysis, we defer to the Departments to provide that expertise.

Ms. Yukimura: Thank you.

Chair Furfaro: Okay. It is my intention now to ask the County Attorney to come up. Gentlemen, thank you very much. I want to make sure that my colleagues realize that this is the first item for today and we have two meetings. We have two meetings today, including this is a Special Council Meeting and then we have a whole group of Executive Sessions and then we have to start our normal Committee Meetings. So one way or the other, I would like to find myself calling for a vote before we go for lunch. Okay? Mr. Castillo, could you introduce yourself. Then I will give the floor to Councilmember Nakamura.

ALFRED CASTILLO, JR., County Attorney: Good morning everyone, Council Chair and Councilmembers. Al Castillo, County Attorney.

Ms. Nakamura: Thank you, Al. I wanted to just ask a very basic question and this has to do with Diversion Programs run by Prosecutor Offices. According to our Charter, is it permissible for the O.P.A., the Office of the Prosecuting Attorney, to run a Diversionary Program? To establish and operate?

Mr. Castillo: Our Charter does not clearly or expressly authorize such a program. Because there is no expressed authority, there has to be an implied authority. The answer to that is no. I should just stop there.

Ms. Nakamura: Well, the reason why I am asking is because I have learned that no other Prosecutor Office in the State of Hawai'i delivers this type of service?

Mr. Castillo: Yes.

Ms. Nakamura: But I also learned during the break that there is some value to the Prosecutor's Office doing it because there is direct accountability with the person, the juvenile being diverted. There is some value to that based on the experience that Maui Police has had. So you are basically saying that there is no implied authority? I am not sure if I am clear about your answer.

Mr. Castillo: First of all, let me say in terms of—there are numerous issues to this agenda item. And first of all in terms of program itself, the value of the program itself, as a former Prosecutor of almost 15 years, I understand where all of the people are coming from and the value of this program. I clearly understand that. The questions by the Legislature here, the Councilmembers, I clearly understand the need for more information. One of the necessary information that you are asking right now is where does the authority come from? Right now, because there is no expressed authority, the question comes from, "Is

there an implied power for the Prosecutor's Office in this case to conduct this form of activity?" What is problematic in me answering this question to you in open, meaning on the floor, is that all I have is that submittal that was submitted to the Chief Procurement Officer. That information from the Chief Procurement Officer does not give me sufficient information on whether or not there is implied authority to conduct such a program. So in essence, what I am telling you is for the County Attorney's Office to render an opinion on the authority of the Prosecutor's Office to engage in this program, that has not been done yet. I am very much willing and able to have that done, provided that we have all of the information that can be done given to us for us to render that opinion. And that would have to come not now, but at a later date.

Ms. Nakamura: Okay. Thank you.

Mr. Castillo: You are welcome.

Chair Furfaro: Mr. Rapozo?

Mr. Rapozo: Does the Charter give anybody express authorization to do Diversion Programs?

Mr. Castillo: There is no—this Diversion Program, no.

Mr. Rapozo: So we cannot do it on Kaua'i?

Mr. Castillo: This Diversion Program—

Mr. Rapozo: You are coming up and telling us—let me finish.

Chair Furfaro: Hold on, both of you gentlemen, a question was posed to Al.

Mr. Castillo: Yes.

Chair Furfaro: Respond to the question.

Mr. Castillo: I would answer that—because your question is can we do it on Kaua'i? I already answered that question.

Mr. Rapozo: Could you re-answer it, because I did not hear it.

Mr. Castillo: The answer is that there is no expressed authority. Whether or not there is implied authority, I would need more information about The Keiki P.O.H.A.K.U. Program to render that opinion and I would like the opportunity to look at all of the documentation as far as how the program is going to be run. And then we can give you a written opinion on that.

Mr. Rapozo: Al, does your Office not represent the Prosecuting Attorney's Office?

Mr. Castillo: Yes, we do.

Mr. Rapozo: This thing is how old? Months old and the day of proposal we come up with another legal issue with another deferral. Is that what

you are saying that you need to do another legal opinion because the Charter does not say that they can do Diversion Programs?

Mr. Castillo: No. And the Client in this case now is asking for an opinion, the Council. And we will do an opinion. Had the Prosecutor's Office asked us for an opinion regarding this matter? Now, I do not want to traverse into any privileged communications that we have had with the Prosecutor's Office regarding this subject matter.

Mr. Rapozo: Well, I am just saying that I guess for me the Charter is basically silent. The Charter does not give express—it does not say that they are to do Diversionary Programs. Is that what I am hearing from you? Help me understand where it is lacking in the Charter?

Mr. Castillo: I answered you earlier that the Charter does not expressly say—gives authority to this particular Diversionary Program.

Mr. Rapozo: This particular one?

Mr. Castillo: Any Diversion Program. The Charter does not.

Mr. Rapozo: How are we doing Teen Court?

Mr. Castillo: Teen Court—

Mr. Rapozo: I am asking the County Attorney, not you, JoAnn.

Mr. Castillo: Teen Court is another Diversionary Program. It went through the proper procurement process. It has a contract and it is signed off by the Police, the Prosecutor, I believe LaVerne Bishop, and someone else. But I do have an M.O.U. here. Whether or not it is a legal Diversionary Program, we can make that determination too.

Mr. Rapozo: Al, I think you are missing my point here. Teen Court has been around forever. I guess maybe because Councilmember Yukimura supports Teen Court we have not had the issues. This issue here at-hand is going through the proper process. They are going through the process which, in fact, not long ago they were scrutinized and criticized because they failed to go through a process. So now they are going through the process and now we are telling them we cannot because the Charter does not give you express authority. I am trying to figure out the difference.

Mr. Castillo: I know, and for me, the program on Teen Court, it has been on the books and it has been doing very well.

Mr. Rapozo: So they are exempt?

Mr. Castillo: I am not saying that they are exempt. Just because a program has been running for a long time, I cannot opine right now how the creation of Teen Court came about and where the implied powers come from, okay? If you want me to do that analysis, I will. If you are asking me why Teen Court is okay and why this is not, I cannot give you that.

Mr. Rapozo: Al, you said earlier that the Charter does not give the Prosecutor's Office express authority for Diversionary Programs.

Mr. Castillo: That is correct.

Mr. Rapozo: I am saying that Teen Court is a Diversionary Program. So that is okay and this one is not?

Mr. Castillo: I did not say it is okay.

Mr. Rapozo: Okay. So we should stop that?

Mr. Castillo: No.

Mr. Rapozo: I think he answered my question.

Chair Furfaro: Councilmember Nakamura.

Ms. Nakamura: Is the distinction that Teen Court is run by a non-profit corporation and the County is a pass-through for the moneys directed to a non-profit corporation whereas Keiki P.O.H.A.K.U., as presented to this body is, I think, the Office of the Prosecuting Attorney will have a staff coordinating, working with the service provider to kind of together implement this program? Is that the distinction?

Mr. Castillo: My understanding of how the implied powers come about is not how you understand. Just because one is a non-profit, that I do not think—I do not know how relevant that is. But I do not know—I do not have enough information right now. The Council is asking me to opine on the legality of Teen Court and the legality of Keiki P.O.H.A.K.U. without—all I am saying is without more information, I cannot make that opinion sitting down right here.

Ms. Nakamura: Thank you, Al.

Mr. Castillo: Thank you.

Chair Furfaro: Do you have a question for Al? Go ahead.

Ms. Yukimura: It is not on this issue of the Prosecuting Attorney's scope of authority under the Charter, it is another legal question.

Chair Furfaro: Let me do my question first.

Ms. Yukimura: Sure.

Chair Furfaro: Al, you are the County Attorney and you represent the Council and the Mayor's Office, and the Administration. To me your primary job for the County as the Corporation Counsel is to measure risk. That is what you do. You measure risk.

Mr. Castillo: Yes.

Chair Furfaro: We have a grant in front of us for \$35,000.00 for a proposed project from the Federal Government. We take grants all over the County,

in every Department, in 17 Divisions. You have a risk here to take \$35,000.00 in a new program from the Federal Government? Is there an implied risk to the Corporation called the County of Kaua'i? I would not think so.

Mr. Castillo: Well, the risk, Council Chair, the risk right now is I do not have enough information to make an assessment.

Chair Furfaro: I can accept that because we go around taking grants and indemnify the State. We take grants and indemnify the Federal Government and contractors. We check credentials for people that are being hired. Your responsibility as my attorney for the body here is to say to me, "Clearly, we have a measurable risk here." I do not see that, not the way we currently do business in this Corporation.

Mr. Castillo: I would appreciate having an Executive Session, so that we can have that discussion.

Chair Furfaro: It will apply for the Corporation called The County of Kaua'i and I will post that in next—

Mr. Castillo: I cannot divulge any more information.

Chair Furfaro: Okay. I will post something in the future. But you understand, and I am coming from the school of business. Before I enter into any kind of contract in the school of business, I measure risks. Do I have a bona fide, certified contractor doing the renovation? Do I have people coming in the capacity to train the staff that understands Hawaiian values to give the best experience? When you enter into those agreements, you have to ask the questions. So what are the risks? Are they certified? Are they in place? Are they bona fide?

Mr. Castillo: I do have those answers available for you in Executive Session.

Chair Furfaro: So we will post something in the near future, so we can talk about this as it applies to all grants. Okay? Now Council Vice Chair Yukimura has another question on a different subject. So she has the floor.

Ms. Yukimura: Thank you. This is in regards to the O.I.P. opinion that we cannot ask questions about Teen Court, because I think if we act on the wrong premise, under the Sunshine Law, I think any decision we make can be invalidated.

Mr. Castillo: Okay, I follow you.

Ms. Yukimura: Would you not advise that we first get that determination in writing?

Mr. Castillo: It is interesting, because I have been a Judge at Teen Court. So I know that program well. I think the material issues for this Council is basically what they are doing now is fact-finding. How one program interplays with the other program. The relevance of that is to be determined by the Council Chair. However, I would say questions that are appropriate in determining what the difference between one or the other is. I am familiar with the M.O.U. for

Teen Court. I know what that is all about. I am not familiar with any M.O.U. for Keiki P.O.H.A.K.U. program.

Ms. Yukimura: I am not asking you to make a decision.

Mr. Castillo: But, because the O.I.P., depending on the question you ask O.I.P. on relevance...I am fully aware of O.I.P. opinions regarding the agenda and relevance and that is determined by the Chair, but it is relevant where you need to know the differences between both programs.

Ms. Yukimura: Are you familiar with the O.I.P. Opinion that Councilmember Bynum got on another matter. It said if tangential issues are involved, and they are open, they should be allowed questions on them?

Mr. Castillo: I am very familiar, because I was here when that entire episode occurred that evening. That is the reason why—however, the relevance of what is being discussed, and it is really up to the Council Chair because he conducts the meeting. However, how one program affects the other might be relevant for you to ask in order for you to make your decision.

Ms. Yukimura: And it is possible that O.I.P. did not understand that relationship?

Chair Furfaro: My question has been answered. I make the decision. I have already explained this to Council Vice Chair Yukimura. I made an opinion on information that I had from O.I.P. about the application of the two. I have already announced to the group that I am posting a separate agenda item on Teen Court on the 17th. You are now being asked about interpretations of Mr. Bynum's piece that O.I.P. did not understand. I mean, I have communication skills. I speak two languages. Maybe they are not always the same connection, but that is a dead issue. I have made my decision. Teen Court is on October 17th based on the information that I extracted from my Staff and the Office of Information Practices. What we start discussing over here, the decision lies with me and here is how they change it. Change the Chairman. Look at our Rules. That decision rests with me.

Mr. Castillo: Chair, with all due respect, that is what I was saying. It does rest with you.

Ms. Yukimura: May I finish my question?

Chair Furfaro; You have the floor.

Ms. Yukimura: Thank you. So it is not—I am not questioning the Chair's decision to have a special session on Teen Court. I am questioning the limitation of discussion on this issue because I believe Teen Court is related. I am asking you, if we violate the Sunshine Law, whether the decisions we make in violation of the Sunshine Law can be validated?

Mr. Castillo: That is correct.

Ms. Yukimura: Is that correct?

Mr. Castillo: That is correct.



Ms. Yukimura: That is all I need to know. Thank you.

Chair Furfaro: Any more questions for the County Attorney? Al, thank you very much.

Mr. Castillo: You are welcome.

Mr. Rapozo: Mr. Chair?

Chair Furfaro: Yes.

Mr. Rapozo: Can we get the Prosecuting Attorney's Office?

Chair Furfaro: I am. I want to be timely as we look at this \$35,000.00 grant, so may I call up the County Prosecuting Attorney's Office?

Ms. Iseri-Carvalho: Shaylene Iseri-Carvalho, Prosecuting Attorney. I would like to address if given permission, the discussion regarding the legal opinion with respect to Diversionary Programs. As this Council knows, I have repeatedly stated on any Diversionary Program and this initially came up when we spoke about the P.O.H.A.K.U. program that on April 10, 2012, the Office of the Prosecuting Attorney received an unsolicited legal opinion from the County Attorney's Office that called into question the legality of the O.P.A. utilizing all diversionary programs. That was in the opinion. We repeatedly said that and it was the County Attorney on numerous occasions, subsequent to that, gave an opinion about the legality of Teen Court that there was nothing that prevented us from operating Teen Court, despite this unsolicited opinion from Ms. Jennifer Winn on April 10. It was at this point that the O.P.A. then discontinued all referrals to Diversion Programs including Drug Court, Teen Court, P.O.H.A.K.U., and mental health diversion because as stated by the County Attorney correctly today, the opinion indicated there was no explicit authority for the Prosecuting Attorney's Office to engage in any Diversionary Program. That was in the opinion. And yet numerous times he has gone to the media and has spoken here to this County Council advising them that they did not prohibit Teen Court from operating when, in fact, today he finally comes clean and tells this County Council that, in fact, there is a question because there is no explicit authority for the Prosecuting Attorney to engage in Diversionary Programs generally. We agreed with that statement. That is why we were at the Charter Review Commission to put it on the ballot to indicate whether or not it could be explicitly maintained by the community, so there would be no question. We brought up the decision about Peter Carlisle when he was engaged in an issue that they believed was not explicitly stated in the Charter. We extracted the language that was part of the O'ahu County Charter to specifically give the Prosecuting Attorney the authority to engage in Diversionary Programs. This was the issue that was raised in P.O.H.A.K.U. It was a general statement by the County Attorney's Office and to sit here today finally telling the truth is amazing to me. Because numerous times we have been blasted in the community, why did we halt these programs? Because as stated by the County Attorney today that is the exact reason because they informed us that all Diversionary Programs were a question. Because there was no explicit authority in the Charter, which I agreed and therefore sought to get another opinion, and on July 30, 2012 Special Counsel Gary Slovin, who was hired by the County Attorney to step into the shoes of the County Attorney because of the conflict, issued an opinion that went public because the opinion was not for the Prosecuting Attorney's Office. The opinion that I received at the same time that Al Castillo received the opinion and that Chair

Furfaro received the opinion. He was not directing the opinion to me but in fact directed it to the County because he was hired to step into the shoes as a County Attorney. And he specifically issued, in Gary Slovin's opinion, that the Prosecuting Attorney has the legal authority to make Diversion Program referrals and Gary Slovin stated that it is an integral part of the operation of the Criminal Justice System that the Prosecutor has this authority to engage in Diversionary Programs.

After receiving that opinion from Gary Slovin who was the County's Attorney, we then indicated to the press, as well as in a press release that all programs will start to—all Diversion Programs will then be put back in place because we had a legal basis that contradicted the County Attorney's opinion. And we were operating under Gary Slovin's opinion because he stepped into the shoes of the County Attorney to give this opinion. So exactly what we have been saying all along is now what the County Attorney then says, which I can show you four or five clips from the media, as well as from Council meetings where he has stated there is nothing wrong with Teen Court and I do not know why Teen Court was halted. You heard him explicitly state generally there is no explicit authority for the Prosecuting Attorney to participate in any Diversionary Programs. There is no distinction. The moneys that come through for Teen Court, like the moneys that will come through, it is the same program. It comes to our Office. The County has a matching portion. We match. So we are engaged. We are engaged in the Teen Court process intimately and the Prosecutors make a decision whether or not we are going to make referrals to Teen Court. They are limited in eligibility requirements because they are only, according to their model, Teen Court model, they only can take first-time offenders. So the program that we are seeking is totally excluded from the participants that will participate in Teen Court. There is no overlap. Persons that go to Keiki P.O.H.A.K.U. are not eligible to go to Teen Court. Keiki P.O.H.A.K.U. offers an alternative and offers and attracts a different type of kid, who we hope we can avoid from going through the Criminal Justice System and who we hope we can provide more opportunities, because they will then, as we have discussed numerous times, kids with criminal records, all those, it is confidential to your normal public, it is not confidential to the military. And if a person who otherwise would have been accepted in the military has a criminal record in a juvenile setting, they will be prohibited or barred from getting into the military. So we are losing and we are taking away all of these opportunities from these kids for a program that costs \$35,000.00. And a lot of what has been the hindrance has been the County Attorney's Office, because the truth is not spoken.

Chair Furfaro: Shay, I have to stop you there.

Ms. Iseri-Carvalho: Let me close.

Chair Furfaro: I gave you a moment to summarize the piece. You did. I also know that this Council has continued to be engaged in queries along those lines with the firm that was hired, and on that note, I wanted to give you some time, but I wanted to give Mr. Rapozo the floor.

Ms. Iseri-Carvalho: If I could just close?

Chair Furfaro: Go ahead and close.

Ms. Iseri-Carvalho: The question that was generally made on all Diversion Programs. Although the opinion specifically spoke about a program, the decision, which we have even quoted, I believe, in the response that have I provided

to you, specifically says that I have told many times that we have been told by the County Attorney's Office that there is no explicit authority for the Prosecuting Attorneys to engage in Diversionary Programs. Then it was contradicted by Mr. Slovin who states in his opinion that it is the view of Special Counsel that the Prosecutor did and does have the authority to establish the P.O.H.A.K.U. Program and Diversionary Programs generally. That is the opinion. So to have the County Attorney come up here and give another opinion on something that this Council had authorized Special Counsel to opine on, it seems way out of character because that was the whole purpose for having Special Counsel be appointed.

Chair Furfaro:  
have the floor.

I am going ask to leave it at that. Mr. Rapozo, you

Mr. Rapozo: I think you answered most of the questions in your statement, but help us understand—you made it clear that first-time offenders go to Teen Court and if everybody would have an opportunity to go to Keiki P.O.H.A.K.U. There was a question asked about the Police Department making referrals. Is the Police Department making referrals for any types?

Ms. Iseri-Carvalho: Under the Charter, the Prosecutor is the sole person responsible for prosecution of all the cases that occur in this jurisdiction. Whether it is a status offense or Law violation, the Police Officers under the Charter and you may look in the Charter Section, they have absolutely no authority to divert or dismiss criminal cases. They cannot initiate a case and they cannot divert a case and they cannot dismiss a case. That is not part of the Charter. That is not part of their duties. It is only related to the Prosecutor's Office. So the referrals are done in conjunction with the Prosecutor's Office where we would say, yes, this person can do it. But the personnel of the K.P.D. does not have any authority to do it alone. What they are doing is in conjunction with permission from the Prosecutor's Office to allow that diverted person to go for a status offense.

Mr. Rapozo: Has K.P.D. in the past made referrals to Teen Court for status offenses?

Ms. Iseri-Carvalho: They have made in the past under Craig DeCosta, yes.

Mr. Rapozo: Under your Administration that has not occurred?

Ms. Iseri-Carvalho: No, I believe under the Charter, it does not allow the Police Officers to charge a case or divert a case or dismiss a case. That is in essence by taking that complaint and sending it to Teen Court, they are involved in the decision-making process of the Prosecutor's Office and that would be overstepping their bounds.

Mr. Rapozo: I understand that. So how would a normal flow occur? Let us say you had a person not eligible for Teen Court, second-time offenders, and obviously it is your Office's discretion. Once that determination has been made for Keiki P.O.H.A.K.U., how is that done? Is the Police Department involved in that?

Ms. Iseri-Carvalho: No.

Mr. Rapozo: Is this third-party—

Ms. Iseri-Carvalho: All decision-making processes of any criminal cases are in the sole discretion of the Prosecuting Attorney's Office across the Country. It is the same standard.

Mr. Rapozo: You make the determination, let us say you divert—

Ms. Iseri-Carvalho: Like someone from our Office, not necessarily me.

Mr. Rapozo: Right. So that decision is made. That person qualifies for Keiki P.O.H.A.K.U. and what happens then?

Ms. Iseri-Carvalho: That person would get referred to the organization the person who wins the bid...whoever is that person.

Mr. Rapozo: They would administer the program?

Ms. Iseri-Carvalho: That is correct. They would provide stats and what is the objectives we achieve and keeping of stats, et cetera, each role is defined, I believe in that document.

Mr. Rapozo: You talk about what they should be doing, and the way I read it, pretty much they will be running the program for the Prosecutor's Office?

Ms. Iseri-Carvalho: We do not have the staff to run the program.

Mr. Rapozo: Okay. That is all I have for now.

Ms. Iseri-Carvalho: We do the same thing as we do for Teen Court. When the cases are referred by the Police Department, they go to a Deputy and a Deputy makes the decision whether or not they are eligible. Sometimes even if they are eligible, they may not go to Teen Court if they have some other mental health issues, et cetera. So not just because it is your first offense, but it depends on your character, your history, and a whole bunch of other factors come into play. It is not just because that is your first time offense. It makes you eligible. It does not make you one that will automatically be transferred just because you are eligible.

Mr. Rapozo: You work with the Police Department, Probation Officers, and so forth in that decision-making process?

Ms. Iseri-Carvalho: Correct.

Mr. Rapozo: Thank you.

Chair Furfaro: Vice Chair Yukimura, you have the floor.

Ms. Yukimura: Let me be clear about this. The way you are applying for the moneys, the Keiki P.O.H.A.K.U. will only take second and third-time offenders?

Ms. Iseri-Carvalho: No.

Ms. Yukimura: They will take first-time offenders as well?

Ms. Iseri-Carvalho: No. They will not take first-time offenders but it does not mean that they will not take fourth-time offenders.

Ms. Yukimura: Just those that are multiple offenders, not first-time—they will not take any first-time offenders?

Ms. Iseri-Carvalho: They will not take people eligible for Teen Court. That is the stipulation with the O.Y.S. agreement.

Ms. Yukimura: I understand at your request, the Memorandum of Understanding between Teen Court and the Prosecutor's Office of the County says they shall take second and third-time offenders as well?

Ms. Iseri-Carvalho: Who, Teen Court?

Ms. Yukimura: That is what I am told.

Ms. Iseri-Carvalho: The Teen Court model prohibits people from being eligible for their program.

Ms. Yukimura: That is what I understood too and I think that is what Ms. Bishop understood too. We will just examine the Agreement, because I have not had a chance to look at the Memorandum of Understanding. I want to ask Staff to get a hold of that, please. So then it is clear, first-time offenders that qualify for Teen Court assistance will go there and second and third time or multiple offenders will go to Keiki P.O.H.A.K.U.?

Ms. Iseri-Carvalho: It may not be multiple offenders also. For example, Teen Court will not take felonies. We have children that happens more than we would like to think that happens that they would steal their parents' car, for example. That would be a felony. That is a U.C.P.B.. That may be their first offense. They are not eligible for Teen Court.

Ms. Yukimura: Okay. That is what I said. First-time offenders who are eligible for Teen Court.

Ms. Iseri-Carvalho: No, they are not eligible for Teen Court.

Ms. Yukimura: Well, those who would go to Teen Court are those who are first-time offenders and they are eligible for Teen Court. And the other ones—

Ms. Iseri-Carvalho: It would be anyone who is not eligible for Teen Court.

Ms. Yukimura: Okay.

Ms. Iseri-Carvalho: The Keiki P.O.H.A.K.U. Program will only consider potential participants who are not eligible for Teen Court.

Ms. Yukimura: Okay. Thank you. Then it is not my understanding at all that Gary Slovin was hired to step in to the shoes of the County Attorneys. He was hired—Special Counsel was hired to sit with you when the Council asked questions about the P.O.H.A.K.U. project. We never substitute a County Attorney's opinion; if there is a question that way, we would go to court. But to hire another attorney to step—and I am pretty sure the scope of work with Gary Slovin did not indicate that. So that is a total misunderstanding.

JAKE DELAPLANE, First Deputy Prosecuting Attorney: I am sorry...

Chair Furfaro: Hold on a second. Let Shay finish. She finished that response. You have not introduced yourself yet.

Mr. Delaplane: I am sorry.

Ms. Iseri-Carvalho: Go ahead.

Mr. Delaplane: Jake Delaplane, First Deputy Prosecuting Attorney. What you are suggesting, Councilmember Yukimura is a gross mischaracterization of what Special Counsel was hired for. We actually have a letter from Al Castillo himself that says that Gary Slovin was hired to step into the shoes of the County Attorney and I can provide that to you.

Ms. Yukimura: I am sure that O.D.C. did not say that.

Mr. Delaplane: Al Castillo himself said that.

Ms. Yukimura: Well, we got Special Counsel only on the advice of O.D.C. and that was to defend the Office of the Prosecuting Attorney against third-party and against, interestingly enough, Council questions.

Mr. Delaplane: I am sorry. I believe that...

Chair Furfaro: You do not have the floor. I am not recognizing you. You do have a letter from Al Castillo?

Mr. Delaplane: I do.

Chair Furfaro: Could you please submit it to the Council Chair?

Ms. Iseri-Carvalho: I can. We will.

Mr. Delaplane: Yes.

Chair Furfaro: Leave it at that.

Mr. Delaplane: Council Chair, I do have to correct that because it was a request from the County Attorney to provide Special Counsel for the Office of the Prosecuting Attorney and that is what this Council voted on. It was a request from Al Castillo to appoint Special Counsel to represent the Office of the Prosecuting Attorney.

Ms. Yukimura: But Special Counsel...

Chair Furfaro: Councilwoman Yukimura, I did not recognize you. I have ended that subject matter. You are going to submit to me the letter you got from the County Attorney.

Mr. Delaplane: I will.

Chair Furfaro: We will leave it at that. You still have the floor, JoAnn.

Ms. Yukimura: Thank you. Just to say, Chair, that in my mind it is impossible that Special Counsel would be hired to substitute as a County Attorney.

Chair Furfaro: I want to make sure you understand—JoAnn I want to make sure you understand I am only asking for that clarification.

Ms. Yukimura: I understand that.

Chair Furfaro: Because you know, as well as every other member around the Council floor here that we are still pursuing issues with that standard contract. So leave it at that.

Ms. Yukimura: Thank you.

Chair Furfaro: I have other Members that want the floor.  
Mr. Chang.

Mr. Chang: Thank you, Chairman. I am not sure if you answered this question, so if you did, I apologize, but is the \$35,000.00 going to be enough to implement this program?

Ms. Iseri-Carvalho: It is enough to start the program. The more months that we have waited we started off with a year and then we cut it in half and went back to O.Y.S. We will attract a much less, I guess, diminished pool than we originally wanted to address. However, it is a start of anyone we can help, who we can save. I can tell you to house a person at H.Y.C.F. is \$135.00 a day.

Mr. Chang: H.Y.C.F.?

Ms. Iseri-Carvalho: Yes. Hawai'i Youth Correctional Facility. Which is why O.Y.S. is so engaged in this process of finding innovative, alternative programs that keep children out of prison. I am for that concept. I think we need to exert every penny we can to saving that child and we are talking about \$35,000.00. Do you not think I would want \$150,000.00? Absolutely, I do. I want \$150,000.00 because we think it is a lot cheaper in the long run to save these kids before they get to Hawai'i Youth Correctional Facility. I just returned back about a month ago. There were 78 people at H.Y.C.F. out of the whole State. They can only hold 48 kids. They only have beds for 48 kids. In one room the air conditioning was down so they were only holding 38 kids. They are doubling and tripling up at H.Y.C.F. It is horrific conditions. Why would we not want as community members to save these kids from having to go there? It is quite unfortunate, because if we had this money two months ago, three months ago we could have saved two, three, four kids, but the more we prolong this, the less kids we are able to save.

Mr. Chang: I totally understand, which is why I am asking it that way, because this would have, should have, and could have been commenced on August 15. Two months ago?

Ms. Iseri-Carvalho: Yes.

Mr. Chang: Thank you.

Chair Furfaro: Councilmember Nakamura, you have the floor.

Ms. Nakamura: I am getting some things not clear in my mind that the application that—the request for proposal is for \$17,600.00, the balance between \$35,000.00 and \$17,600.00 is going to be spent by the Prosecutor's Office?

Ms. Iseri-Carvalho: No.

Mr. Delaplane: We submitted that as part of the budget. It is actually part of the grant proposal, which we have provided to you.

Ms. Nakamura: That is what I have in front of me. That is what I am looking at. Administrative costs being \$17,600.00 and you have promotional materials, safety materials, and training, that is not part of the Request for Proposal. So I thought in your discussion during the break, Jake, that you were saying that you have Staff in your Office that will be working with the provider to provide the services. I am assuming that the balance comes out of the O.P.A. budget?

Ms. Iseri-Carvalho: No. None of this money comes from us. The grant is for \$35,000.00. There is a J.A.B.G. Grant and a formula grant.

Ms. Nakamura: The \$35,000.00 is from the Office of Youth Services?

Ms. Iseri-Carvalho: Correct. We do not have any moneys coming from the Prosecutor's Office.

Ms. Nakamura: Well, that is not what I heard during the break. So I am sorry.

Ms. Iseri-Carvalho: I do not know who you spoke to.

Mr. Delaplane: It must have been a misunderstanding, because we are not talking about County moneys here.

Ms. Nakamura: We are talking about County positions.

Mr. Delaplane: We have a Program Coordinator position that is used.

Ms. Nakamura: That is funded out of what budget?

Mr. Delaplane: Out of County budget. This is not the only Program Coordinator.



Ms. Nakamura: So you have a position in your Office that is County-funded that will be working—what will be the role of that position?

Ms. Iseri-Carvalho: The person works with all diversionary programs, Mental Health Diversion, Drug Court Diversion, and we have Teen Court.

Ms. Nakamura: So someone to oversee the contracts?

Ms. Iseri-Carvalho: Oversee in a sense. We also have a Grant Coordinator who deals with the budgetary aspects of the grant and making sure that reports are provided. The Program Assistant would be assisting in getting the statistics that are required to show the objectives are met for the grant.

Ms. Nakamura: So it is getting the grant funding out to the different providers and doing the monitoring?

Ms. Iseri-Carvalho: It is not getting the money out. There will be one provider. We do not have any other providers. I mean, the contract that went out for the R.F.P. for this program was one person. It is not like there will be multiple people as far as coordination.

Ms. Nakamura: There were other Diversionary Programs that you have grant funds for?

Ms. Iseri-Carvalho: Some of them we do. Drug Court, we do not get any moneys for. Mental Health Diversion, we do not get any money for Mental Health Diversion. Teen Court, we match. So there is a County salary match, which comes out from the Office of the Prosecuting Attorney's budget. And grant funds. So it is both. We are applying for other grants like the Drug Market Initiative.

Ms. Nakamura: I thought Mr. Delaplane described that program—what do you call it Program Coordinator?

Ms. Iseri-Carvalho: Program Assistant.

Ms. Nakamura: That person would be doing a lot of coordination?

Mr. Delaplane: They will be coordinating. I think the best way I could probably describe it is that they shepherd the case through. The case comes in through the screening process and the Deputy Prosecuting Attorney looks at the case and decides whether this is something eligible for diversion or not. We have to have someone who keeps their eye on the ball and makes sure that case gets diverted to the service provider and that at the completion of services that it comes back and the appropriate process is followed. It essentially shepherds the case.

Ms. Nakamura: Who gets the remaining \$17,600.00 as part of the grant?

Ms. Iseri-Carvalho: The grant money?

Ms. Nakamura: Yes.

Ms. Iseri-Carvalho: It will go to the program for them to provide—because it is for program materials, right? There is a certain portion for program

materials and the equipment as far as the community service if they needed gloves, et cetera. All of that is run through the vendor, not our Office.

Mr. Delaplane: The funding will be administered by the service provider.

Ms. Nakamura: Why is that not part of the request for proposal?

Ms. Iseri-Carvalho: I am not sure why.

Ms. Nakamura: Why not for the whole \$35,000.00?

Mr. Delaplane: I think R.F.P. is actually for more. The \$17,600.00 that you are looking at is in the grant application. The R.F.P. I believe is—

Ms. Nakamura: This is the R.F.P. that I am looking at. I am looking at the—

Mr. Delaplane: And the line item is what on the R.F.P.?

Ms. Nakamura: Notice for Professional Services. This is funding estimated budget is not to exceed \$17,600.00.

Ms. Iseri-Carvalho: That is just for the program, I believe the operations of the program, for the participants. But as far as the supplies and the promotional materials, that was in addition.

Ms. Nakamura: So should that not be in this notice? I know when on the planning side, when we go for Professional Services, I believe it encompasses everything in the contract?

Ms. Iseri-Carvalho: It should have.

Mr. Delaplane: That may be and we would have to talk to the Procurement Officer about that. We can work with Ernie on getting that straightened out.

Ms. Nakamura: That clarifies a lot for me.

Ms. Iseri-Carvalho: That would make sense. Maybe if we could get Ernie back here. That would be good. I apologize, but a lot of this discussion was done with our Grant Coordinator and she is not here today, because she is off. But she and Ernie had numerous emails and meetings going back and forth.

Chair Furfaro: On that note, since I see Councilwoman Yukimura adding up more questions, Councilmember Nakamura wants procurement back. It is 12:30 and we are going to break for lunch.

Ms. Iseri-Carvalho: What time do we return, Chair?

Chair Furfaro: We will hopefully be back by 1:30 and we will start right with you folks.

Ms. Iseri-Carvalho: Thank you.

Chair Furfaro: Unfortunately, we have a continued agenda from the Special Council Meeting going into Executive Sessions and we still have our Committee Meetings to cover today. So we are in recess until 1:35.

There being no objections, the meeting recessed 12:30 p.m.

The meeting reconvened at 1:40 p.m., and proceeded as follows:

Chair Furfaro: We have returned from break for lunch. I want to say to Members that I am going to reference a couple of vote options here, also some of our Rules, and also let you know that I will be in response referencing item 6(f) in our rules, which will allow each of you an additional five minutes on this item, especially if you have already spoken twice on the same question. And so I am going to ask us to get to a place where we can take a vote. Now on the votes, I want to make sure we understand, because we have Mr. Bynum who is recused and we have Mr. Kuali'i who is absent, and to accept any money or a grant, the fact of the matter is that we need four votes and if we do not get the four votes, this will come back up as the first item on a subsequent Council Meeting. So we understand that, those are the rules. I am going to let you know that I am going to be dealing with 6(f). And I am going to ask you folks each to have the floor for no more than five minutes.

Mr. Rapozo: I have a question.

Chair Furfaro: Yes.

Mr. Rapozo: Four votes needed to pass, but the only way it will go to a first order of the day would be, or Special Order of the Day would be, if we get to a tie vote, right?

Chair Furfaro: That is a very good question and I will ask the Clerk that. If we ended up with a 3-3 vote, it goes to the First Order of the Day. If it goes to a 3-2 vote and does not have significant votes to pass, which are the needed four, what are the consequences then, Mr. Clerk? I am directing the question to you.

There being no objections, the rules were suspended.

Mr. Watanabe: I am referring to Council Rule No. 5(e). What that pertains to is a "Council Absence, Tie Vote." It says, "At a Council Meeting if Members are evenly divided on any main motion, or if there are insufficient votes to carry any main motion because of the absence of a Member, the item shall be made the Special Order of the Day for the next regular Council Meeting." Given that, if there are, because it is a Council Meeting, the majority of the Council, the membership of the Council, is 4 votes.

Chair Furfaro: Right. So you are clear, Clerk, this is not one on an evenly divided vote. I am saying what happens if we arrive at a 3-2 vote?

Mr. Watanabe: It is insufficient votes and becomes Special Order of the Day at the next subsequent Council Meeting.

Chair Furfaro: So it happens the same way as I described and it will appear on October 10.

Mr. Watanabe: That is right.

Chair Furfaro: October 10 is the next scheduled Council Meeting.  
Vice Chair Yukimura.

The meeting was called back to order, and proceeded as follows:

Ms. Yukimura: Because there is no discussion on a motion to defer, I would ask what would be the reason for not moving on a motion to defer at least pending a report from a written opinion from O.I.P., or a discussion about the related Teen Court proposals? Because otherwise we have this special meeting and we just make a motion to defer based on that. I mean if we have a good reason to defer, why have a special meeting?

Chair Furfaro: What we are dealing with right now is that we have a motion on the floor to approve and a second. That is the motion on the floor.

Ms. Yukimura: Right.

Chair Furfaro: If you want to get a deferral, you have to lobby for a deferral vote, second, and then the deferral question has precedence over the motion to approve.

Ms. Yukimura: Right.

Ms. Nakamura: I would like to make a motion to defer, pending a County Attorney's Opinion on whether the Charter allows the Office of the Prosecuting Attorney to establish and pass-through funds for a Diversion Program.

Chair Furfaro: Before we go any further with discussion, I want to let you know that at lunch I had some discussion about this item being an agenda item for October 28. That is my intent and I stated that earlier that I had planned to put it on as an agenda item. But our calendar is extremely full on the 10th. You all know that. We also have the departure of Senator Akaka. We have limited time. The choice is up to you folks. I am talking in the terms of measuring risk. At the same time, it is very hard to get any testimony or assessment from some of the people who testified today because of some of the procedures outlined as questioned by Vice Chair Yukimura. They did not have the understanding of what the assessed use of the particular program would be and there was the question of the diversionary authority which I planned to put on the 28<sup>th</sup>. There was discussion about the special scope of work that was given on the outside contracted attorney. But if you read his letter, there is no real case law that he quotes on his determination. I agree there is a number of moving parts. I may take a few things off the October 10 agenda if we are going to go in this measure because this assessment on the Diversion Program authority is a Countywide question and it is going to take a lot of discussion. I want to make sure you understand that I already raised that point and I am trying to fill a future agenda when we have appropriate time, but I may have to bump some things tomorrow if the vote goes that way.

Ms. Yukimura: Chair?

Chair Furfaro: I am sorry, the meeting I asked for on the diversionary question would be October 24, not the 28th, so just a correction to my statement. Vice Chair, you have the floor.

Ms. Yukimura: Until we can get an opinion from the County Attorney that we cannot approve the grant proposal, because it presumes the authority.

Ms. Nakamura moved to defer C 2012-336 pending the opinion from the County Attorney, seconded by Ms. Yukimura.

Chair Furfaro: There is no further discussion. Mr. Rapozo, I never heard the second.

Mr. Rapozo: Neither did I, but what I am saying that the motion has been made and needs a second or it will die.

Ms. Yukimura: Then I second the motion.

Chair Furfaro: Then no further discussion. Mr. Chang?

Mr. Rapozo: Call for the question.

Chair Furfaro: Call for the question.

Ms. Yukimura: Point of inquiry, that has precedence.

Mr. Watanabe: On the motion to defer and a second, there is no further discussion.

Ms. Yukimura: But a point of inquiry does.

Chair Furfaro: I am sorry, there is no further discussion on a motion to defer.

Ms. Yukimura: Point of order.

Chair Furfaro: Go ahead, quote the rule.

Ms. Yukimura: I believe there is a rule that says that a question or a point of inquiry takes precedence.

Chair Furfaro: We will take a recess until you can get me the rule number.

There being no objections, the meeting was recessed at 1:48 p.m.

The meeting reconvened at 1:52 p.m., and proceeded as follows:

Chair Furfaro: Okay, I want to first reference the Council Rules have precedence over Robert's Rules of Order when our Rules are not silent and our Rules are not silent on this one, so my first interpretation was appropriate. Once we got the second on the deferral, there is no room for further discussion and the

exceptions are made in Robert's Rules of Order only if our Rules are silent and they are not. So we have a motion and a second

Mr. Rapozo: Call for the question.

Chair Furfaro: Give me a roll call vote.

The motion for deferral of C 2012-336 was then put, and carried by the following vote:

FOR DEFERRAL: Nakamura, Yukimura	TOTAL-2,
AGAINST DEFERRAL: Chang, Rapozo, Furfaro	TOTAL-3,
EXCUSED & NOT VOTING: Kualii	TOTAL-1,
RECUSED & NOT VOTING: Bynum	TOTAL-1.

Chair Furfaro: So that means we will continue today. Now members we are back to where I originally was and that was we will call back the session here. I will allow you, according to our Rules, time to speak, but do not exceed five minutes.

Ms. Yukimura: Mr. Chair?

Chair Furfaro: Yes.

Ms. Yukimura: I have a question of the Prosecuting Attorney.

Chair Furfaro: Okay.

There being no objections, the rules were suspended.

Ms. Iseri-Carvalho: Shaylene Iseri-Carvalho, Prosecuting Attorney.

Mr. Delaplane: Jake Delaplane, First Deputy Prosecuting Attorney.

Chair Furfaro: Before we go any further, I want to make sure we understand; the deferral pending an interpretation from the County Attorney is, in fact, not a motion that survived. But on the other side I want to make sure you understand that if we do not have four votes today, this immediately gets deferred until October 10.

Ms. Iseri-Carvalho: Thank you.

Ms. Yukimura: Yes. There has been a lot of confusion about whether the Police will be involved in this program and I would like you to explain how and if they will be involved.

Ms. Iseri-Carvalho: I would love to have the Police involved.

Ms. Yukimura: How do you plan to do that?

Ms. Iseri-Carvalho: One of the things that we had discussed and this was also discussed at the K.C.J.E.C. meeting with the rest of the members that were present. For the Police Officers, school is only in session during certain times

and so whenever there is a break, there was a request by the Police Officers that during those times that they were on break from school that they would be able to participate in this program. And the Maui program, they have Officers that work during the regular work week that are engaged in the orientation process with the P.O.I. and they are engaged in the orientation process, et cetera. But the difference between Maui and Kaua'i is Maui has a Juvenile Section with the Police Department. Kaua'i does not. So they have a lot more staff dedicated to assist with juveniles. There are workers and when I went and participated in the P.O.I. process, there were Officers there. Usually if there are community service hours because it is a Police-run program. They have a 4:1 ratio. They do not want—usually it is actually 3 or 4 to 1 Officer that participates. That is for safety reasons and also it depends on the type of crime that the participant was involved in. That issue of safety is determined by the coordinator, I guess, the Supervisor. So they participate actively within the Juvenile Section, and also with aspects of the community service because I did a ride along and participated where the parents dropped the kids off at the Police Department and the Police Department loads them up into the van and taken to the work site with the type of equipment, et cetera, necessary for the job that they are assigned, because they are assigned different places, depending upon what week they come in to do their community service.

Ms. Yukimura: So have you discussed this with the Kaua'i Police Department?

Ms. Iseri-Carvalho: We have.

Ms. Yukimura: And is this integrated into your grant proposal? Because I do not see anything mentioned in it.

Ms. Iseri-Carvalho: It is part of the community service aspect.

Ms. Yukimura: Who determines where the child goes for community service?

Ms. Iseri-Carvalho: The child? A lot of times we will determine. There are various work sites. We had in our regular P.O.H.A.K.U. Program approximately 150 participants that signed up as community work sites. Now these work sites were for adult participation in programs. There they are also allowing juveniles to participate in programs as well. So from the list that we generated, these would be part of the participants that would allow community service at their non-profit organization.

Ms. Yukimura: So can you submit to us a copy of the agreements between...

Ms. Iseri-Carvalho: We have no agreements.

Ms. Yukimura: You do not have any agreements?

Ms. Iseri-Carvalho: For Keiki P.O.H.A.K.U., we do not have any agreements because we do not have funding.

Ms. Yukimura: No, I am talking about the P.O.H.A.K.U. program the agreements between the community service sites and—

Chair Furfaro: I am sorry, JoAnn, P.O.H.A.K.U. is not on the agenda item.

Ms. Yukimura: The Prosecuting Attorney has mentioned this *keiki* program is going to be just like the P.O.H.A.K.U. program with community service providers and I want to know what kind of agreements to protect the County against liabilities and to make clear the responsibilities of the different providers are.

Chair Furfaro: We are in recess. May I see the County Attorney?

There being no objections, the meeting recessed at 1:18 p.m.

The meeting reconvened at 1:59 p.m., and proceeded as follows:

Chair Furfaro: After consulting with the County Attorney, the feeling is that in responding to the question, reference was made to the same standards as P.O.H.A.K.U., so therefore I will allow the question.

There being no objections, the rules were suspended.

Ms. Yukimura: So do you have an agreement?

Ms. Iseri-Carvalho: All of the agreements for all of the things that are involved with the County will be processed through the County Attorney's Office.

Ms. Yukimura: No, I want to know whether you have—since the P.O.H.A.K.U. has already been established, whether you have agreements with the community service providers and the County?

Ms. Iseri-Carvalho: We have agreements and we have actually provided it in your packet on the P.O.H.A.K.U. questions. We had indemnification signatures that were provided in the P.O.H.A.K.U. packet.

Ms. Yukimura: And it is an agreement between the community service providers?

Ms. Iseri-Carvalho: And the participant, not with the Prosecuting Attorney's Office. It is with the participant.

Ms. Yukimura: Well, that does not suffice. It needs to be between the County Attorney or your contractor.

Ms. Iseri-Carvalho: I believe we would be following all of the rules and all of the indemnification agreements for this grant. We have had hundreds of grants at the Prosecuting Attorney's Office.

Ms. Yukimura: That is not my question.

Ms. Iseri-Carvalho: We follow the same process of indemnification in protecting the County from liability. All of those issues will be discussed with the County Attorney's Office.



Ms. Yukimura: If you have done that, then you have a copy of the agreement between your service providers for P.O.H.A.K.U. and I would like to have that provided to us. I would like to know also how Keiki P.O.H.A.K.U. integrates the concept of graduated sanctions.

Ms. Iseri-Carvalho: It does not incorporate the concepts of graduated sanctions.

Ms. Yukimura: Well that is required by the Juvenile Accountability Block Grant (J.A.B.G.) Chapter.

Ms. Iseri-Carvalho: That is not correct. If you look under Juvenile Accountability Block Grants, 42-USC-3796. It includes different types of authorized activities. So it does not say all of those activities need to be incorporated in one program. That would be ridiculous. It says, "Amounts paid to State or unit of Local Government shall be used by the State or unit of Local Government for the purpose of strengthening the Juvenile Justice System," which includes, it does not say it shall include in every program. There are so many misstatements, Ms. Yukimura, that you continue to perpetuate. We provide you all of the information and yet you mislead the public when you say that is what is required. It includes—any one of these can be part of the program. I think you should take time to do your due diligence and review these things.

Ms. Yukimura: That is why I am asking these questions. Thank you for clarifying. How would I know except if I ask them?

Ms. Iseri-Carvalho: Well we provided this over a week ago and it is also provided in 42-USC-3796.

Ms. Yukimura: Okay.

Ms. Iseri-Carvalho: The Juvenile Accountability Block Grants Chapter, we have had these grants for over two decades. You have been on the County Council numerous times. I have been on the County Council. I approved this J.A.B.G. grants. I know what the purpose is for these J.A.B.G. grants. This is not the first time that you are not looking at this section, I would presume, if you did do your due diligence.

Chair Furfaro: I will now let other Members have questions now and remind all of you I am holding you to the time allocated in our rules, especially if it looks like there will not be the votes for today. Mr. Rapozo you have the floor.

Mr. Rapozo: I want to clarify, do my questions count?

Chair Furfaro: I am counting that time as well.

Mr. Rapozo: Okay, then I am not going to, I will reserve my time for the five minutes.

Chair Furfaro: Anybody else with further discussion on this item? It looks like it is going to get deferred by not being able to get to the appropriate votes anyway. Okay. Thank you very much. I have the appropriate status is now a motion we had to approve the project made earlier. I am going to ask members if they would like to speak around the table. Did you want to speak first, Mr. Rapozo?

There being no objections, the meeting was called back to order and proceeded as follows:

Mr. Rapozo: Sure, I will go first and you can start my time. I have five minutes. I am going to repeat a lot what I said last week, because there may be some new viewers watching and this is really meant for the public. We constantly, in this Council and politicians, constantly talk about doing things for the kids and this is an opportunity today and we had an opportunity a week ago and we had an opportunity for many meetings to do something in the positive light for our kids here, our troubled kids, for the kids that need help. I do not think we should blow this opportunity. This procurement contract was supposed to be from August 15 to July 30 and it is already October. We are still grumbling. From last discussion, it seems like this body is trying to find reasons to vote no, rather than trying to find reasons to vote yes, trying to find reasons to help this program off the ground. We are just nonstop trying to find—well, if Plan A does not work and go to Plan B and get the County Attorney to tell us that we cannot move forward. Let us keep doing whatever we can to stop this program, and it is disgusting.

There are some confidentiality issues that the Chair talked about. Some of the communications that come to us end up in the media. Why? This is our workplace, not the media. Keiki P.O.H.A.K.U. is simply an addition to our existing resources for kids. It is an addition. It does not take away from any other program. I think we have heard it several times already, it is a supplement. It will not touch the Teen Court eligibility. If they are eligible for Teen Court, that is where they are going to go. We have never micromanaged a grant application like I have seen in last few weeks, down to who is going to do the referrals. I have never seen anything like it and it is disturbing.

We did the marathon, we were not concerned about the signage. Did the County Attorney approve the signage for liability whether the runners were on the road? We asked the Office of Economic Development, how wide the land would be—we passed it. We just passed it. \$300,000.00 or \$400,000.00 or whatever it was over the last few years. There was no question of liability, but we are finding every single rock in this one. Imagine if we, this Council, was to dictate to every single Department Head how to run their programs that we fund through grants. I do not think that is our job, number one. Teen Court itself, when they came up for their funding, never went through any discussions like this.

Again, I cannot remember a grant—and this is for \$35,000.00. I will not say it is a small grant because it is still \$35,000.00, but the positive responses, the positive goals that can be achieved with this program is, in my opinion, awesome. A lot has come up about Teen Court and we will have that discussion later, but it is like we are trying to create a monopoly, like everything goes through Teen Court and nothing else. Why? We have an opportunity to reach out to kids that cannot get access to Teen Court. That is what this \$35,000.00 will do. There is no doubt in my mind that politics is playing a role in this decision. I think everybody watching today sees it. Because it is clear. And it is a shame that the kids are out there, needing our help, and we could have had this thing off the ground and running in August you and it is already October and we are still looking at deferring. We are still looking at deferring. We still have to get more answers. So the County Attorney comes up and says there is a measurable risk. There is a problem with this Diversionary Program, but maybe not the others. Why? What separates this one? I still cannot figure it out.

We have a petition here with 113 signatures from people of all ages and we heard the testimony today from the D.O.E., K.P.D., and I spoke to the Anti-Drug Coordinator, Theresa Koki yesterday, and Mark Ozaki, who is a member of the Committee. Except for a few people on this Council, I have yet to hear anybody that has a question about this program. It is almost like the P.L.D.C., there was nobody who said yes and the Council agreed and everybody is saying yes, we need the help. We need the help, and this Council continues to say, "Wait. Let us see if we can find something wrong with this program." I think it is a shame. I really do. We have authorized and approved—that is five? Thank you, Mr. Chair. I just want to say that I am hoping that everybody is held to the same standards and respect time and I am hoping we can get to four votes today. Thank you.

Chair Furfaro:

Mr. Chang, you have the floor.

Mr. Chang: Thank you. I just want to say, I cannot even recall going through major discussion for \$35,000.00. I have to say that. I also want to say that politics or anything does not make my decision here. We have talked about Life's Choices, Boys and Girls Club. We have talked about Diversion Programs. We have been talking about drug treatment centers. The discussion has been always about the kids and it has. I think we are waiting too long for our decision. I was ready to make my vote last week, respectful to a one-week deferral. That is what I stand on. We were supposed to vote and in light of the other considerations and concerns that there are, it looks as though it is going to get back on the agenda once again and this gives people the chance to discuss this. But I want to just say we know about the problems, the crimes, the social problems and we have had a problem for a long, long time. I am going to support it and I said that since last week because I think it is the right thing to do. Crime hurts everyone and outside of the kids, we talk about the kids' program; the parents, the uncles, aunties and the grandparents...there is stress everywhere. If there is any kind of Diversion Program, this program—let us think about it, this program is called The Keiki P.O.H.A.K.U. Program. The kids, the Children's Productive Optimism Helps All Kaua'i Unite. So a *pōhaku* is a rock. It is strong, solid and it is a foundation. That is what we need to do is to give people strength and make people solid and establish a foundation. I do understand there are questions and there are concerns, which will and can be addressed. But for now, I believe that we have been just—in this particular case, I think we have been scrutinizing and pounding this program when this program should have been happening, in my opinion, a long time ago to get started.

We have to start at one point and sure, we do not have all the answers and we are implementing something new, but I believe and God willing that I am here, because when the program gets working and the program gets going, I believe whoever is around should be funding this program. We need to put our money where our mouth is because we talk a lot about *kōkua* and children and crime. It is the health and our livelihood, our economy, and everything else. So I will say this was not a difficult decision for myself, because I do work with people that I know within the community that are helping the children, very, very close to U-Turn For Christ that is yet again another Diversionary Program, and look at how many different people—if they fall in the cracks one side or another, there are optional places to put the people where they are at. Like I said last week and what I will say again, what made me support the program from the get-go, this is our host culture. If we can instill and value that traditions and the lifestyle, just the *mana'o* and the *ho'oponopono*, the ability to respect one another and instill this in the kids. We all

know long ago that our parents took the problems in their own hands and that was permitted. Nowadays, you cannot do that. That is not permitted. We need these diversionary programs and I am in support of this program. I do not believe that I need any of my own questions answered. I think I have everything answered by doing my own due diligence. Thank you very much.

Chair Furfaro: Anyone else to speak before I call for the vote, then I will speak last. Vice Chair Yukimura.

Ms. Yukimura: Yes, Chair, thank you. This campaign season we are hearing all of this high-sounding talk about accountability and how the County should avoid large payments for mismanagement and violations of the law. But when I want to ask relevant questions, I am criticized for doing that. The reason for lack of accountability and big settlements that we are having to pay is the failure by leaders like us to ask the hard questions. So I take offense at charges that I am acting politically by asking questions about Keiki P.O.H.A.K.U., after many issues of mismanagement of the P.O.H.A.K.U. project that are causing payment of tens of thousands of dollars in taxpayers' money for legal defense and \$200,000.00 plus in settlement moneys for O.P.A.'s management of the Office. It is my responsibility as a Councilmember to ask how the Keiki P.O.H.A.K.U. Program is designed and how it will be managed. To say we should rubberstamp this grant application is failing to recognize the importance of accountability. Because if our job is just to rubberstamp grants, why even require Council approval in the first place? It is just unnecessary paperwork. We need to know. We need to know how this program is being developed. They can and will be addressed. Yes, they will be addressed by paying for County Attorney fees and settlements? That is too late. So the time now is to ask the questions. If I were just doing things politically, why did I vote for \$200,000.00 in grant proposals for the County Prosecuting Attorney's Office just the last meeting? If I were just doing this politically, I would just rubberstamp this. That would be the popular thing to do. Everybody is for kids, why are you against kids? Well, I will tell you. I care about the kids and voting for—that is why I asked about the failure of the Prosecutor to refer kids to Teen Court for five months. There is all of this talk how terrible it is that we deferred the approval of this for so long. Well, for five months there were no referrals of probably 50 plus kids. Where are they going? What are they doing? That is the same concern that I have about our kids and it is my concern about kids that is asking questions or underlying my questions about this program. So there are many, many questions that are unanswered. There is very, very much lack of alignment with the requirements of the Federal Law. If the County Attorney could properly answer these questions, we might be able to move ahead. I want to point out that where department heads are answering our questions, we approve programs very easily, and clearly, because they do. They are able to answer the very legitimate questions that we ask.

Chair Furfaro: Councilmember Nakamura.

Ms. Nakamura: Thank you. During the budget process earlier this year, we had a pretty good conversation about the need for Diversion Programs. I really think that we need to do more as a community and we need to structure these programs and include everyone in this discussion. I think this is the direction that we need to go. I do have some concerns based on the discussions that we have had so far. Before we left for the break, I asked about the funding. Why did we not go out for the full \$35,000.00? It was brought to my attention just now that because half of the funds were going to be used by the Office of the Prosecuting Attorney. This is what the Budget Department's understanding is and that may not be what

your understanding is. So that is an issue. During the break, I also had a chance to question what about the cost of the counselors, about coordinating the community services activities, and for \$17,600.00, I am really concerned about the success of this program. I think if we—and I think Elaine had a really good point, that really what can you do with \$17,600.00? If we are going to do this, I think we need to do it right from the very beginning.

Chair Furfaro: You need to know that these are our meeting conversations.

Ms. Nakamura: So my other concern and this is why I asked for the County Attorney opinion is that none of the other Prosecutors Offices around the State of Hawai'i run a Diversion Program. I am not clear based on the feedback that I got whether it was going to be a pass-through, which is what I heard from some people and then I heard that you are actually going to have staff doing some of the work, which is also what I heard. And so this is from your staff. So that is why I would like some clarification, and that is why I asked for the deferral and for the County Attorney's opinion. I am concerned that the mission of the Prosecutor's Office is to prosecute. I do not know and I am just not comfortable right now about adding to that mission, because this is about providing an important social service, one that I think needs to be provided on this island. That is changing the life of a juvenile offender and avoiding the Criminal Justice System. So I will not be supporting this motion.

Chair Furfaro: It has been another interesting day on this subject that has been going on since April. First of all, I want to say that I think the Keiki P.O.H.A.K.U. Program, as well as the Teen Court program, is in fact, two sides of the same coin. We need to put it in some order here. Whether somebody wants to reconcile my opinions of discussions with O.I.P. or not, that is what people have their freedoms to say. We will be having more discussion on October 17 as it deals with Teen Court. That gives us some time to get some written clarity from O.I.P. What I was trying to say to the County Attorney earlier, this is a grant for \$35,000.00. I want the Administration to hear me, too, because during this whole time that we have spoken, nobody has come here from the Administration. I see Mr. Heu here now, but that was recently because these funds get the oversight of the Administration. Teen Court gets the oversight of the Administration. Those funds are managed in a budget that has oversight from the Administration. So I, as a Councilmember, I measure risk. We have a \$35,000.00 grant, what kind of exposures do we have? Do we have all i's and t's crossed in the contract and did we do the right things in the procurement process? That is what is important in my role as a Legislator. I felt the 113 signed testimonies about the value of the program were very good today. Obviously we have Police support, Hale 'Ōpio support, and yet at the same time, I was a little discouraged because those people who came to testify were not able to give credible comments about how they assessed the program itself. But at the same time, I have got to realize it is a new effort. It is a first-time launch. And quite frankly, we need to do more for our young people on this island. It is tough. It is tough to deal with the kinds of things that young people today get exposed to. Quite frankly, it is tough to be a young person today. Some of us know that these drug issues touch all families. I have had a niece that has gone through this and in early days on the Wai'ānae Coast, if she had guidance and things to turn to, perhaps we would have had a different outcome and that is what this piece is about. I do want to say that this authority question on department heads with diversion and so forth is not going to be an easy question. It has to be across the board. It has to be the same for the Wastewater

and has to be the same for the Prosecuting Attorneys and the same for Housing. If we are going to make these kinds of interpretations, they have to be fair and equitably established across the board and that is not going to be an easy question. As I started my statement, I see this as Keiki P.O.H.A.K.U. and Teen Court as two sides of the same coin. I think the risk at \$35,000.00 and based on the answers that I got from Finance, Mr. Rezentes and Mr. Barreira from Purchasing, I think we have everything in order where we want it.

So I am going to go ahead and vote to support this, but I want to make sure that the people understand the Rules here. Our Rules on these money bills actually take four votes. If we end up in a tie or we end up or not getting the four votes, this reappears at the next Council Meeting as the first agenda item. That is the same as a deferral almost at this point. Unfortunately, the timing will not be such that we get both items, both Teen Court and the Keiki P.O.H.A.K.U.; we will not have them on the same calendar, unfortunately. I think in referencing two sides of the same coin, which would probably be the best practice for us to be able to have discussion on both programs. My authority as the Council Chair, I may wean some of the agenda items for October 10 since this program will come back from our agenda. But I will be voting "yes" on these funds and I think it could be the first step to another good program. As the testimony that I read from you, from people in Honolulu, at the State level they support both programs. So we just need to get focused. I am ready to call for the vote, please.

The motion for approval of C 2012-336 was then put, and became the Special Order of the Day at the October 10, 2012 Council Meeting by the following vote:

FOR APPROVAL: Chang, Rapozo, Furfaro	TOTAL-3,
AGAINST APPROVAL: Nakamura, Yukimura	TOTAL-2,
EXCUSED & NOT VOTING: Kualii	TOTAL-1,
RECUSED & NOT VOTING: Bynum	TOTAL-1.

Chair Furfaro:

Thank you.

There being no objections, the rules were suspended.

Ms. Iseri-Carvalho: I already have three meetings scheduled on O'ahu for next week Wednesday so if there is anything that you need of me today, I will be available here. But Jake and Jamie will be here for next week Wednesday.

The meeting was called back to order, and proceeded as follows:

Chair Furfaro: Thank you for sharing your schedule with us. Mr. Clerk, what I want to do is I want to move to the executive items on this Special Council meeting, and then I want to recess this meeting, so that we can go right to the regular Council Meeting with the other agenda items. After the items are read, then we will recess and go back to the Council Meeting. For those of you in the audience, we will go into the Committee Meetings, the regular Committee Meetings scheduled for today. So for the County Attorney, can you go ahead and read the items today on the full agenda.

There being no objections, the rules were suspended.

EXECUTIVE SESSION:

Mr. Castillo: Thank you. Council Chair, Councilmembers, Al Castillo, County Attorney. I am going to read ES-572, ES-573, ES-576, and ES-577.

ES-572, pursuant to HRS Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(e), the Office of the County Attorney, on behalf of the Council, requests an executive session with the Council, to allow Council to consult with the County Attorney regarding the claim against the County by Keith K. H. Young and Sylvia J. Luke, of the law firm of Cronin, Fried, Sekiya, Kekina & Fairbanks, on behalf of Jeffery Sampoang, filed on July 31, 2012, and previously on the Council's Agenda as C 2012-351, and related matters. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-573, pursuant to HRS Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(e), the Office of the County Attorney, on behalf of the Council, requests an executive session with the Council, to allow Council to consult with the County Attorney regarding the claim against the County by Verna Rita, filed on July 10, 2012, and previously on the Council's Agenda as C 2012-353, and related matters. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-576, pursuant to HRS Sections 92-4, 92-5(a)(4), and Section 3.07(e) of the Kaua'i County Charter, the Office of the County Attorney requests an executive session with the Council to provide the Council with a briefing on the retention of special counsel(s) to represent the County of Kaua'i, Sheila Miyake and Shaylene Iseri-Carvalho in Tim Bynum vs. County of Kaua'i, et al., Civil No. CV12-00523 RLP (U.S. District Court), and related matters. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-577, pursuant to HRS Sections 92-4, 92-5(a)(4), and Section 3.07(e) of the Kaua'i County Charter, the Office of the County Attorney requests an executive session with the Council to provide the Council with a briefing on the retention of special counsel(s) to represent the County of Kaua'i, Office of the Prosecuting Attorney and Shaylene Iseri-Carvalho in Rebecca Vogt vs. County of Kaua'i, Office of the Prosecuting Attorney, et al., Civil No. 12-1-0273 JRV (Fifth Circuit Court), and related matters. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

Chair Furfaro: To the County Attorney, before you leave, Al, I want to make sure you understand what I want to do. I will take a roll call vote for the Members that are here, of which we have five, to go into Executive Session. Then I will move to recess this Special Council Meeting so that we can go into the regularly scheduled Committee Meetings. Is that acceptable?

Mr. Castillo: Yes, Council Chair, I would like guidance on what is the Chair's preference regarding the order? Because in that respect, then I can have...

Chair Furfaro: You can make a recommendation to the Clerk based on the availability of your people.



Mr. Castillo: Thank you very much.

The meeting was called back to order, and proceeded as follows:

Chair Furfaro: Members, I will call for a roll call vote to go into Executive Session.

Mr. Rapozo moved to convene in Executive Session at 2:32 p.m., as requested by the County Attorney, seconded by Ms. Yukimura.

FOR EXECUTIVE SESSION: Chang, Nakamura, Rapozo, Yukimura, TOTAL-5,  
Furfaro

AGAINST EXECUTIVE SESSION: None TOTAL-0,  
EXCUSED & NOT VOTING: Bynum, Kualii TOTAL-2.

Chair Furfaro: Thank you very much. We have five as to go into Executive Session. But I am going to recess the Council Meeting at this time.

There being no objections, the meeting was recessed at 2:33 p.m.

The meeting reconvened at 7:09 p.m., and proceeded as follows:

Chair Furfaro: We do have two items to vote on as we exited from our Executive Session. May I ask, Madame Clerk, to please read the items?

#### COMMUNICATIONS:

C 2012-389 Request (09/26/2012) from the Office of the County Attorney for authorization to expend funds up to \$75,000.00 (\$25,000.00 each) to retain special counsel(s) to represent the County of Kaua'i, Sheila Miyake and Shaylene Iseri-Carvalho in Tim Bynum vs. County of Kaua'i, et al., Civil No. CV12-00523 RLP (U.S. District Court), and related matters.

Ms. Nakamura moved to approve C 2012-389, seconded by Mr. Chang.

Chair Furfaro: Is there any discussion? Vice Chair Yukimura.

Ms. Yukimura: Just to clarify, we would be approving \$25,000.00 payment to Special Counsel to defend three defendants, the County of Kaua'i, Sheilah Miyake, and Shaylene Iseri-Carvalho in this lawsuit.

Chair Furfaro: For a total approval of \$75,000.00.

Ms. Yukimura: I will be voting for this, but I want to be clear that it is as limited by the Charter, which allows "For defense only in matters relating to their official powers and duties."

Chair Furfaro: As it relates to their official powers and duties. Okay. Further discussion? If not I will ask for a roll call vote. We have five members and to get this approved I need five ayes, roll call please.

The motion for approval of C 2012-389 was then put, and carried by the following vote:



FOR APPROVAL: Chang, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL-5,
AGAINST APPROVAL: None	TOTAL-0,
EXCUSED & NOT VOTING: Kualii	TOTAL-1,
RECUSED & NOT VOTING: Bynum	TOTAL-1.

C 2012-390 Request (9/26/2012) from the Office of the County Attorney for authorization to expend funds up to \$50,000.00 (\$25,000.00 each) to retain special counsel(s) to represent the County of Kaua'i, Office of the Prosecuting Attorney and Shaylene Iseri-Carvalho in Rebecca Vogt vs. County of Kaua'i, Office of the Prosecuting Attorney, et al., Civil No. 12-1-0273 JRV (Fifth Circuit Court), and related matters.

Ms. Nakamura moved to approve C 2012-390 as amended to \$25,000.00, seconded by Mr. Chang.

Chair Furfaro: Is there any further discussion? If not, roll call, vote, please.

FOR APPROVAL: Chang, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL-5,
AGAINST APPROVAL: None	TOTAL-0,
EXCUSED & NOT VOTING: Bynum, Kualii	TOTAL-2.

Chair Furfaro: So noted for the record we have five ayes. On that note, I want to say in particular thank you very much to the Staff for letting us go beyond their normal dinner time. Thank you very much. It is much appreciated by the body. On that note, our business for the day is completed. We are adjourned.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 7:12 p.m.

Respectfully Submitted,



JADE K. FOUNTAIN-TANIGAWA  
Deputy County Clerk

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